

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

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



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

WHATCOM COUNTY COUNCIL

**COMBINED
AGENDA PACKET FOR
OCTOBER 12, 2021**

**INCLUDES INFORMATION
FOR THE FOLLOWING MEETINGS:**

**9:45 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
(ADJOURNS BY 11:45 A.M.)**

**12:45 P.M. - PUBLIC WORKS AND HEALTH COMMITTEE
(ADJOURNS BY 1:15 P.M.)**

**1:25 P.M. – CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE
(ADJOURNS BY 2 P.M.)**

**2:05 P.M. – PLANNING AND DEVELOPMENT COMMITTEE
(ADJOURNS BY 2:30 P.M.)**

**3:05 P.M. - COMMITTEE OF THE WHOLE
(ADJOURNS BY 5 P.M.)**

6 P.M. - COUNCIL

PARTICIPATE IN VIRTUAL COUNCIL MEETINGS

THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY

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

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

COMMITTEE AGENDAS

COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

9:45 A.M. TUESDAY, October 12, 2021 (ENDS NO LATER THAN 11:45 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. AB2021-575 Report from the Assessor's Office
Page 1

Committee Discussion and Recommendation to Council

1. AB2021-527 Request approval for the County Executive to enter into an agreement with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table in the amount of \$190,000 (Council acting as the Flood Control Zone District Board of Supervisors)
Pages 2 – 20
2. AB2021-547 Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440
Pages 21 – 41
3. AB2021-549 Ordinance establishing the Central Plaza Tenant Improvements Fund and establishing a project based budget for the Central Plaza Tenant Improvements Project
Pages 42 – 45
4. AB2021-579 Request approval for the County Executive to enter into an interagency agreement between Whatcom County Flood Control Zone District and the State of Washington Department of Ecology for Whatcom Marine Resources Committee (MRC) Operations and Projects (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 46 – 83
5. AB2021-580 Request permission for the County Executive to enter into a Joint Funding Agreement between the Whatcom County Flood Control Zone District (FCZD) and the United States Geological Survey (USGS) (Council acting as the Flood Control Zone District Board of Supervisors)
Pages 84 – 90
6. AB2021-581 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and the State of Washington Department of Health to provide funding to implement the Whatcom County Enhanced Pollution Identification and Correction Program in the amount of \$580,000 for a total amended contract amount of \$1,627,732 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 91 – 140

7. AB2021-587 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham, in the amount of \$250,000 for Whatcom County's share of this reimbursement for the design of West Horton Road extension
Pages 141 – 147

Council "Consent Agenda" Items

1. AB2021-563 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Blaine for FY2020 Operation Stonegarden (OPSG), in the amount of \$31,923.00
Pages 148 – 201
2. AB2021-564 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Everson for FY2020 Operation Stonegarden (OPSG), in the amount of \$43,500.00
Pages 202 – 255
3. AB2021-565 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Ferndale for FY2020 Operation Stonegarden (OPSG), in the amount of \$63,732.50
Pages 256 – 309
4. AB2021-566 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for FY2020 Operation Stonegarden (OPSG), in the amount of \$65,000.00
Pages 310 – 363
5. AB2021-567 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Sumas for FY2020 Operation Stonegarden (OPSG), in the amount of \$44,927.50
Pages 364 – 417
6. AB2021-568 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Department of Fish and Wildlife for FY2020 Operation Stonegarden (OPSG), in the amount of \$27,335.00
Pages 418 – 471
7. AB2021-558 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering to perform environmental monitoring and sampling of closed landfills, in the amount of \$62,683 for a total amended contract amount of \$168,517
Pages 472 – 484
8. AB2021-589 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Youth Services to provide housing case management services in the amount of \$33,977 for a total amended contract amount of \$212,748
Pages 485 – 495

Items Added by Revision

Other Business

Adjournment

COUNCIL PUBLIC WORKS & HEALTH COMMITTEE

12:45 P.M. TUESDAY, October 12, 2021 (ENDS NO LATER THAN 1:15 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. AB2021-571 Discussion of an ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions
Pages 496 – 509
2. AB2021-584 Discussion informing the Council on the status of the June 10th Emergency Proclamation to repair Deer Trail, a local access road in the Birch Bay Community
Pages 510 – 511

Items Added by Revision

Other Business

Adjournment

COUNCIL CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE

1:25 P.M. TUESDAY, October 12, 2021 (ENDS NO LATER THAN 2:00 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. AB2021-536 Report from Superior Court
Pages 512 – 513
2. AB2021-573 Report from District Court
Page 514

Items Added by Revision

Other Business

Adjournment

COUNCIL PLANNING AND DEVELOPMENT COMMITTEE
2:05 P.M. TUESDAY, October 12, 2021 (ENDS NO LATER THAN 2:30 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. AB2021-574 Report from the Planning and Development Services Department
Page 515

Items Added by Revision

Other Business

Adjournment

COUNCIL COMMITTEE OF THE WHOLE
2:35 P.M. TUESDAY, October 12, 2021 (ENDS NO LATER THAN 5:00 P.M.)
Virtual Meeting

Call To Order

Roll Call

Announcements

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Committee Discussion

1. AB2021-395 Discussion and periodic update of the Shoreline Management Program
Pages 516 – 793
2. AB2021-482 Presentation and discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities
Pages 794 – 799

Committee Discussion and Recommendation to Council

1. AB2021-561 Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)
Pages 800 – 803
2. AB2021-209 Resolution regarding permanent affordability of childcare in Whatcom County
Pages 804 – 823

Items Added by Revision

Other Business

Adjournment

COUNCIL AGENDA

REGULAR COUNCIL MEETING

6:00 P.M. TUESDAY, October 12, 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. MIN2021-076 Committee of the Whole Executive Session for September 28, 2021
Pages 824 – 827
2. MIN2021-077 Committee of the Whole for September 28, 2021
Pages 828 – 832
3. MIN2021-078 Regular County Council for September 28, 2021
Pages 833 – 857

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. AB2021-539 Ordinance adopting amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities (2021-2026)
Pages 858 – 869
2. AB2021-543 Ordinance adopting 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 870 – 910

3. AB2021-544 Ordinance adopting amendments to the Unified Fee Schedule relating to density credit fees for increasing the size of accessory dwelling units
Pages 911 – 914
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 915 – 931
5. AB2021-414 Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County
Pages 932 – 953

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. AB2021-563 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Blaine for FY2020 Operation Stonegarden (OPSG), in the amount of \$31,923.00
Pages 148 – 201
2. AB2021-564 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Everson for FY2020 Operation Stonegarden (OPSG), in the amount of \$43,500.00
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Pages 310 – 363
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Pages 364 – 417
6. AB2021-568 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Department of Fish and Wildlife for FY2020 Operation Stonegarden (OPSG), in the amount of \$27,335.00
Pages 418 – 471

7. AB2021-558 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering to perform environmental monitoring and sampling of closed landfills, in the amount of \$62,683 for a total amended contract amount of \$168,517
Pages 472 – 484
8. AB2021-589 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Youth Services to provide housing case management services in the amount of \$33,977 for a total amended contract amount of \$212,748
Pages 485 – 495

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. AB2021-527 Request approval for the County Executive to enter into an agreement with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table in the amount of \$190,000 (Council acting as the Flood Control Zone District Board of Supervisors)
Pages 2 – 20
2. AB2021-547 Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440
Pages 21 – 41
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Pages 141 – 147

(From Council Committee of the Whole)

8. AB2021-561 Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)
Pages 800 – 803
9. AB2021-209 Resolution regarding permanent affordability of childcare in Whatcom County
Pages 804 – 823

(No Committee Assignment)

10. AB2021-538 Resolution setting regular Whatcom County Council meeting dates for 2022
Pages 954 – 957

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. AB2021-582 Ordinance amending the 2021 Whatcom County Budget, request no. 16, in the amount of \$411,953
Pages 958 – 964
2. AB2021-572 Ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions
Pages 965 – 978
3. AB2021-590 Ordinance imposing a second interim moratorium on the acceptance and processing of permit applications for new or expanded recreational cannabis growing and/or processing facilities which are proposed to operate outdoors or in greenhouses
Pages 979 – 983
4. AB2021-576 Resolution adopting the 2022 Annual Construction Program (ACP)
Pages 984 – 1042
5. AB2021-583 Resolution amending the Flood Control Zone District & Subzones 2021 budget, request no. 4, in the amount of \$855,502 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 1043 – 1046

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCIL MEMBER UPDATES

ADJOURN



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-575

File ID:	AB2021-575	Version:	1	Status:	Agenda Ready
File Created:	09/27/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from the Assessor's Office

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Assessor Annual 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
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-527

File ID:	AB2021-527	Version:	1	Status:	Referred
File Created:	09/07/2021	Entered by:	AKell@co.whatcom.wa.us		
Department:	Council Office	File Type:	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request approval for the County Executive to enter into an agreement with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table in the amount of \$190,000 (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council Finance and Administrative Services Committee	RECOMMENDED FOR AUTHORIZATION	
09/28/2021	Council	REFERRED TO COMMITTEE	Council Finance and Administrative Services Committee

Attachments: Staff Memo, Proposed contract



MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, Whatcom County Executive, and the
Whatcom County Flood Control Zone District (FCZD) Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary S. Stoyka, Natural Resources Manager

RE: Contract with Cascadia Policy Solutions, LLC to Develop and Implement a
Collaborative Water Solutions Table

DATE: September 2, 2021

Requested Action

Public Works respectfully requests that the County Executive, and the County Council, acting as the Flood Control Zone District Board of Supervisors, enter into an agreement for the sum of \$190,000 with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table.

Background and Purpose

Community leaders in Whatcom County have worked cooperatively for over two decades to resolve long-standing issues related to water management. In October 2020, Executive Sidhu distributed a draft concept paper outlining his proposal for water interests to participate in a collaborative process to attempt to reach agreement on how to comprehensively resolve the community's long-standing water issues. The Board of Supervisors provided \$250,000 in funding for this effort in the 2021 FCZD budget. Furthermore, at the request of the Executive, the Washington State Legislature has provided a total of \$250,000 to the County in the current state biennial budget to fund the proposed collaborative process and related technical work. In January 2021, the County hired local water experts at Cascadia Policy Solutions, LLC to reach out to major water interests in Whatcom County to determine the level of readiness to engage in a comprehensive water settlement process and to provide legislative outreach and engagement. The results of that assessment indicated universal interest, albeit at various levels, in such a collaborative process. This agreement includes the development and implementation of the collaborative process, referred to as a "Solutions Table".

Based on the unique qualifications of the consultant team, the Executive has determined that Cascadia Policy Solutions, LLC is a sole source provider for this contract per WCC 3.08.060(a).

Funding Amount and Source

The contract is not to exceed \$190,000 and shall be implemented in two phases. The scope of work for the current phase is described in the attached contract with a budget of \$95,000 and an anticipated completion date of March 31st, 2022. A scope of work for an additional phase will be developed based on the results of the first phase. The second phase has a budget of \$95,000 and an anticipated completion date of December 31, 2022.

There are sufficient funds in the 2021 FCZD budget to fund the first phase of this contract. The budget for the second phase is included in the proposed 2022 Flood Control Zone District budget (Cost Center 169121). It is anticipated that both phases of this contract will be paid for using money provided to the County by the state legislature in the 2021-2023 state budget.

Please contact Gary Stoyka at extension 6218 for any clarification or additional information on the agreement and the associated project.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
202109002

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Natural Resources - 907010
Contract or Grant Administrator:	Gary Stoyka
Contractor's / Agency Name:	Cascadia Policy Solutions, LLC
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 checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>pending</u>	
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>169121</u>	
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 checked="" 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 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 type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>190,000.00</u>	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:
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ _____	2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
Summary of Scope:	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.
Cascadia Policy Solutions, LLC will develop and implement a collaborative "Solutions Table" with key water interests in the County in an attempt to resolve the region's long-standing water conflicts.	
Term of Contract: time and materials; not to exceed	Expiration Date: 12/31/22

Contract Routing:	1. Prepared by: Gary S. Stoyka	Date: 9/1/21
	2. Attorney signoff: Christopher Quinn	Date: 9/2/21
	3. AS Finance reviewed: M Caldwell	Date: 9/2/21
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed:	Date:
	6. Submitted to Exec.:	Date: 09/07/21
	7. Council approved (if necessary):	Date:
	8. Executive signed:	Date:
	9. Original to Council:	Date:

CONTRACT FOR SERVICES
Between Whatcom County and Cascadia Policy Solutions, LLC

Cascadia Policy Solutions, LLC, hereinafter called **Contractor** and Whatcom County Flood Control Zone District, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 1 to 10,
 Exhibit A (Scope of Work), pp. 11 to 11,
 Exhibit B (Compensation), pp. 12 to 12,
 Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the 1st day of August, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2022.

The general purpose or objective of this Agreement is to: Develop a Solutions Table to engage local water interests to find solutions to water-related conflicts in Whatcom County, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is \$95,000.00. This contract may be renewed by the Executive, subject to budget appropriation, for an additional \$95,000.00. The total contract amount including renewals shall not exceed \$190,000.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

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

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

CONTRACTOR:

Cascadia Policy Solutions, LLC

 Jay J. Manning, Consultant

CONTRACTOR INFORMATION:

Cascadia Policy Solutions, LLC

Jay Manning, Consultant

Address:
606 Columbia Street NW, Suite 212
Olympia, Washington 98501
(360) 786-5078

Mailing Address:
same

Contract for Services
 Cascadia Policy Solutions, LLC

Page 1

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Jon Hutchings, Public Works Director Date

Approved as to form:

Christopher Quinn, Senior Deputy Prosecuting Attorney-Civil Division Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

GENERAL CONDITIONS

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

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

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

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

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

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

2. Business Automobile Liability

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or

proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

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

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

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

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it

will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

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

37.1 Administration of Contract:

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

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

Gary Stoyka, Natural Resources Program Manager, (360) 778-6230, gstoyka@co.whatcom.wa.us

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Cascadia Policy Solutions, LLC
Attention: Maia D. Bellon
1201 Third Avenue, Suite 320
Seattle, WA 98101
Telephone: (206)292-6300
Email: mbellon@cascadiapolicy.com

Whatcom County
Attention: Gary Stoyka
322 N. Commercial Street, Suite 110
Bellingham, WA 98225
Telephone: (360) 778-6218
Email: gstoyka@co.whatcom.wa.us

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number

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Cascadia Policy Solutions, LLC

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as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

- 38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:
If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

- 38.3 E-Verify:
The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. If applicable, Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

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

- 40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.
- 40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
- 41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
- 41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 42.1 Disputes:

a. General:

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

b. Notice of Potential Claims:

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

c. Detailed Claim:

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

d. Arbitration:

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

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

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

43.1 Venue and Choice of Law:

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

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
Scope of Work
Development and Implementation of Nooksack Water Solutions Table

Task 1: Coordination with Existing Processes

The Consultant will attend monthly coordination meetings with County staff and Whatcom County Drainage-Based Management (DBM) project leads in order to ensure coordination of ongoing basin-wide and sub-basin level water related processes. These meetings will include updates on the on-going Regional Water Supply Planning (RWSP) process that is currently identifying areas with water shortages and potential solutions and the Salmon Recovery Plan update that identifies priority strategies and actions to improve salmon recovery.

Task 2: Communications with Stakeholders

The Consultant will stay in contact with the WRIA 1 Watershed Management Board entities and other key basin stakeholders and governmental entities to keep them informed of continuing efforts to establish a Solutions Table and to gather their perspectives on same and to determine their readiness to participate in a Solutions Table. The Consultant will also provide periodic updates to the public as directed by the County.

Task 3: Development of a Solutions Table Process

The Consultant will develop a Solutions Table proposal for the County's consideration and present such proposal to key parties upon the County's approval. The proposal shall include:

- A list of the key parties that should be invited to participate in the Solutions Table.
- A description of a governance structure that can be presented to the key parties.
- A description of facilitation and other support services needed to convene the Solutions Table.
- A proposed venue.
- A strategy to lead the key parties to an agreement on a strategy to address key water supply, instream flows, and other watershed issues, including an evaluation of the form such an agreement could take and the pros and cons of various approaches and the relationship between such an agreement and the adjudication process.
- A more general description of the relationship between the Solutions Table and a potential Nooksack Basin general stream adjudication.
- A description of the relationship between the Solutions Table and on-going processes such as the DBM and RWSP.

Task 4: Implementation of the Solutions Table Process

Once the key parties are ready to proceed and at the direction of the County, the Consultant will implement the preliminary stages of the Solutions Table proposal. The goals of preliminary stages shall include agreement on:

- A governance format.
- The desired outcomes of the Solutions Table.
- Meeting frequency and duration.
- A strategy to report progress of the Solutions Table to key stakeholders and elected officials.
- Ongoing coordination with the Department of Ecology and related local, state, Tribal, and federal government entities.

Deliverables:

1. Solutions Table Proposal as described above.
2. Solutions Table meeting summaries.

Deliverables to be submitted electronically.

Timeframe:

The Solutions Table proposal shall be delivered by October 31, 2021. The remainder of the work shall be completed by March 31, 2022. Subsequent tasks will be developed following the completion of the above tasks and will be completed by December 31, 2022.

EXHIBIT "B"
(COMPENSATION)

In consideration of the services performed under the terms of this Contract, the Contractor shall be paid a total not to exceed \$95,000.00 through March 31st, 2022. Subject to approval by the County, the Contractor shall be paid a total not to exceed \$190,000.00 for work performed through the contract end date of December 31, 2022.

Billing Procedures: The Contractor shall submit written claims on a monthly basis in any month where there is activity in this case for reimbursement of services provided unless otherwise approved in writing by the County. It is agreed that the Contractor shall be paid for their services within 30 days of receipt of the monthly claim and upon determination of accuracy. Monthly claims are to be submitted to the Administrative Officer.

Contractor's Fee Schedule: Contractor bills for services by the hour. For this matter, the Contractor is offering discounted municipal rates to reflect the public nature of the work. The Contractor will charge the County according to the following rate schedule:

Maia Bellon	\$395 per hour for work on this matter
Jay Manning	\$395 per hour for work on this matter
Paralegal	\$100 per hour for work on this matter
Administrative Assistant	\$85 per hour for work on this matter

Charges for time spent traveling will be at 75% of the rates shown above.

The County will also reimburse the Contractor for all out-of-pocket costs incurred on behalf of the County. These items include such things as travel expenses including car mileage in excess of 30 miles per trip at the business mileage rate calculated by the IRS (currently \$.56 per mile); copying expenses at \$.15 per copy (\$.75 per color copy) for in-house copying and at cost, including taxes, for outside copying services; long distance telephone charges; FAX charges; document delivery charges and conference call charges at cost; court or administrative board filing fees and other court- or board-related expenditures including court reporter and transcription fees at cost, and computerized legal research charges.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-547

File ID:	AB2021-547	Version:	1	Status:	Substitute Introduced
File Created:	09/15/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #15 requests funding from the General Fund:

1. To appropriate \$105,440 in Sheriff to fund cameras for interview rooms, body worn cameras, less lethal tasers, and less lethal BolaWrap (legislative mandate).
2. To appropriate \$100,000 in Council to fund COVID pandemic response review.
3. To appropriate \$60,000 in Planning & Development to fund transfer for fire inspector replacement vehicle.
4. To appropriate \$6,000 in Parks & Recreation to fund Tennant Lake Tower camera from donation proceeds.

From the Election Reserve Fund:

5. To appropriate \$98,000 to fund election security and streaming cameras from grant proceeds.

From the American Rescue Plan Act Fund:

6. To appropriate \$30,000 to fund Public Defender additional office space.

From Real Estate Excise Tax I Fund:

7. To appropriate \$400,000 to fund Central Plaza tenant improvement project.

From Equipment Rental & Revolving Fund:

8. To appropriate \$60,000 to fund acquisition of fire inspector replacement vehicle.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	SUBSTITUTE INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, Budget Summary, Supplemental Requests, Agenda Revision Notice for 9.28.21.pdf, Budget Supp#15-2021Summary_revised, Suppl#15 Requests_revised, Supplemental #15-2021_revised

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 15				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Sheriff	To fund cameras for interview rooms (legislative mandate).	16,967	-	16,967
Sheriff	To fund body worn cameras (legislative mandate).	18,976	-	18,976
Sheriff	To fund less lethal tasers (legislative mandate).	55,945	-	55,945
Sheriff	To fund less lethal BolaWrap (legislative mandate).	13,552	-	13,552
County Council	To fund COVID pandemic response review.	100,000	-	100,000
Parks & Recreation	To fund Tennant Lake Tower camera from donation proceeds.	6,000	(6,000)	-
Total General Fund		211,440	(6,000)	205,440
Election Reserve Fund	To fund election security and streaming cameras from grant proceeds.	98,000	(98,000)	-
American Rescue Plan Act Fund	To fund Public Defender additional office space.	30,000	-	30,000
Real Estate Excise Tax I Fund	To fund Central Plaza tenant improvement project.	400,000	-	400,000
Total Supplemental		739,440	(104,000)	635,440

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3313

Fund 1

Cost Center

Originator: Rodger Funk

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Legislative Mandates -Cameras for Interview Rooms

X

Bar Capo

9.13.2021

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6510	Tools & Equip	\$16,967
	Request Total		\$16,967

1a. Description of request:

The proposal is to acquire equipment and associated licenses required to outfit two interview rooms at the Whatcom County Sheriff's Office (WCSO) with cameras and microphones to record interviews and interrogations.

1b. Primary customers:

All commissioned deputies of the Whatcom County Sheriff's Office.

2. Problem to be solved:

The WCSO needs to outfit two interview rooms with this technology to be in compliance with state law.

The state legislature passed a number of "police reform" bills during the 2021 legislative session. Included in these was ESHB 1223 which is an ACT relating to the uniform electronic recordation of custodial interrogations act.

Included in ESHB 1223, an ACT relating to the uniform electronic recordation of custodial interrogations act is an electronic recording requirement which states:

Section 3 (1) ...custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility must be recorded by audio and video means. A custodial interrogation at any other place of detention must be recorded by audio means at minimum. This law requires deputies to record every encounter where they may question a person about a crime if the person is a juvenile involved in any level of crime, or an adult being questioned about a felony crime. Interviews conducted at the Sheriff's Office will be required by law to be audio and video recorded.

The WCSO interview rooms are currently equipped with a camera system available to detectives. Access to the computer and software to start and manage the recordings is available only to detectives. The system records to local media and requires additional steps to archive and retain the video. The current system has had functionality issues and is not always available. In addition, it has limitations and does not meet current evidentiary needs.

The estimated first year cost to implement new cameras for two interview rooms is \$16,966.61 (\$15,594.31 plus tax of \$1,372.30). The ongoing yearly cost is \$6,756.50 (\$6,210.02 plus estimated tax of \$546.48). The ongoing cost includes licensing and unlimited cloud storage.

3a. Options / Advantages:

The WCSO currently uses Axon body cameras. WCSO previously piloted several different options and

Monday, September 13, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3313

Fund 1

Cost Center

Originator: Rodger Funk

determined Axon to be the best option. The WCSO subsequently entered into a Five (5) Year Master Services and Purchasing Agreement with Axon Enterprises Inc in December 2020 (Whatcom County Contract No. 202012030). Axon uses Evidence.com to retain and distribute digital evidence. The proposed interview camera system records directly to Evidence.com. Evidence storage is cloud based. The current system is a different vendor requiring the evidence to be retained separately.

Using Evidence.com digital evidence is easily shared among deputies, prosecutors, and other Evidence.com users. Several local agencies, including the Whatcom County Prosecutor, are using Evidence.com

The Axon system is the same system used for the body worn cameras already in use by the Sheriff's Office and would provide access to all deputies rather than just detectives.

The Axon system allows for the interview to be monitored and notated by authorized users remotely if necessary.

3b. Cost savings:

The cost savings associated with the acquisition of the Axon interview cameras is based on compliance with the legislation and reducing liability to Whatcom County by having deputies' interactions recorded. In addition, Axon cameras are already deployed by WCSO; therefore, policies and trainings are already in place.

4a. Outcomes:

Upon installation of Axon Interview cameras, every deputy will have the capability to record interviews and interrogations at the Sheriff's Office and will be able to comply with ESHB 1223.

4b. Measures:

The new cameras will allow more deputies to utilize the existing Evidence.com system. This system is already monitored and utilized.

5a. Other Departments/Agencies:

Yes.

Whatcom County I.T. will oversee the installation of servers, cameras and microphones by Axon. The rooms are already wired for cameras and the technological infrastructure already exists. Axon would perform the installation.

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

Perry Rice (I.T. Manager)

6. Funding Source:

Washington State Funding for Whatcom County Criminal Justice Legislation.
Authorized under Section 740, Chapter 334, Laws of 2021 (ESSB 5092).

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3314

Fund 1

Cost Center

Originator: Rodger Funk

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Legislative Mandates -Body Worn Cameras

X

B. M. Eg

9-13-2021

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6510	Tools & Equip	\$18,976
	Request Total		\$18,976

1a. Description of request:

The proposal is to acquire 18 Body Worn Cameras and associated licenses and equipment required.

1b. Primary customers:

All commissioned deputies of the Whatcom County Sheriff's Office.

2. Problem to be solved:

The state legislature passed a number of "police reform" bills during the 2021 legislative session. Included in these was ESHB 1223 which is an ACT relating to the uniform electronic recordation of custodial interrogations act.

Included in ESHB 1223, an ACT relating to the uniform electronic recordation of custodial interrogations act is an electronic recording requirement which states:

Section 3 (1) ...custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility must be recorded by audio and video means. A custodial interrogation at any other place of detention must be recorded by audio means at minimum. This law requires deputies to record every encounter where they may question a person about a crime if the person is a juvenile involved in any level of crime, or an adult being questioned about a felony crime. The body worn camera is a device that will capture the interactions between our deputies and the public they serve. This will include the capability to record both the audio and visual components of an interrogation which occurs in the field.

The WCSO needs a minimum of an additional 18 body worn cameras and associated licenses to allow each deputy to wear the device. The estimated yearly cost for these cameras, associated equipment and licenses is \$18,975.64 (\$17,440.85 plus tax of \$15,34.79).

3a. Options / Advantages:

The WCSO currently uses Axon body cameras. WCSO previously piloted several different options and determined Axon to be the best option. The WCSO subsequently entered into a Five (5) Year Master Services and Purchasing Agreement with Axon Enterprises Inc. in December 2020 (Whatcom County Contract No. 202012030). The additional cameras are the only ones that would work with the currently used Evidence.com system.

3b. Cost savings:

The cost savings associated with the acquisition of the Axon body cameras is based on compliance with the legislation and reducing liability by having deputies' interactions recorded. In addition, Axon cameras are already deployed by WCSO; therefore, policies and trainings are already in place.

Monday, September 13, 2021

Rpt. Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3314

Fund 1

Cost Center

Originator: Rodger Funk

4a. Outcomes:

Upon receiving additional Axon cameras every deputy will have a camera available to them and will be able to comply with ESHB 1223.

4b. Measures:

The additional cameras will allow more deputies to utilize the existing Evidence.com system. This system is already monitored and utilized.

5a. Other Departments/Agencies:

No.

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

6. Funding Source:

Washington State Funding for Whatcom County Criminal Justice Legislation.
Authorized under Section 740, Chapter 334, Laws of 2021 (ESSB 5092).

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3316

Fund 1

Cost Center

Originator: Rodger Funk

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Legislative Mandates -Less Lethal Tasers

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6510	Tools & Equip	\$55,945
	Request Total		\$55,945

1a. Description of request:

The proposal is to acquire 40 tasers.

1b. Primary customers:

All commissioned deputies of the Whatcom County Sheriff's Office.

2. Problem to be solved:

The state legislature passed a number of "police reform" bills during the 2021 legislative session. Included in these was ESHB 1054, also called the "tactics bill", and ESHB 1310, which is an ACT relating to permissible use of force by law enforcement. One of the sections of ESHB 1054 prohibits law enforcement agencies from acquiring or using "military equipment." "Military equipment is defined as follows:

(3)(a) "Military equipment means firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

The plain text of ESHB 1054 makes two less lethal devices illegal, in particular: the 12-gauge shotgun and the 40mm launcher. Both devices were less lethal options that the Whatcom County Sheriff's Office previously had at their disposal. The shotguns were used to deploy less lethal beanbag rounds, and the 40mm launchers were used to deploy soft impact rounds. However, both the shotguns and the launcher are greater than .50 caliber, as measured by the internal diameter or bore of a gun barrel.

The Whatcom County Prosecuting Attorney advised in attached memo, "Due to the legislative prohibition on these types of devices, the Whatcom County Sheriff's Office will need to find other options for less lethal devices that fit within the confines of ESHB 1054."

The WCSO uses less lethal launchers to provide a safer way to gain control over persons involved in potentially lethal encounters. Without the less lethal projectile, deputies have to move into close proximity to armed individuals if they want to gain control over the individual. This close proximity is often a causal factor in the use of lethal force.

Included in ESHB 1310, regarding permissible use of force, is Section 3 (2)(d)(e) which states:

- (d) When possible, use available and appropriate less lethal alternatives before using deadly force; and
- (e) Make less lethal alternatives issued to the officer reasonably available for their use.

The Whatcom County Sheriff's Office must provide our deputies less-lethal devices to comply with State law, and ensure the deputies have the necessary tools and equipment to safely de-escalate incidents and

Tuesday, September 14, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3316

Fund 1

Cost Center

Originator: Rodger Funk

take control of persons while avoiding the use of deadly force.

Tasers are a less-lethal device utilizing conducted energy to limit a person's ability to conduct an attack. The Taser is an intermediate use-of-force option that is currently deployed by WCSO deputies.

3a. Options / Advantages:

The requested tasers are intended to replace outdated or non-functional tasers. The WCSO currently has certified taser instructors and all WCSO deputies are trained in the proper use of the taser.

3b. Cost savings:

The cost savings are not easily measured. The cost and effect of a lethal police encounter within a community is immense. The ability to disarm or contain an armed person with less lethal equipment could save lives.

4a. Outcomes:

Upon receiving the tasers the WCSO will equip our deputies with this less lethal device designed to save lives and comply with state law.

4b. Measures:

Successful deployment and utilization of this less-lethal device will provide positive outcomes by being in compliance with state law and having the equipment necessary to de-escalate situations and preserve human life.

5a. Other Departments/Agencies:

No.

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

6. Funding Source:

Washington State Funding for Whatcom County Criminal Justice Legislation.
Authorized under Section 740, Chapter 334, Laws of 2021 (ESSB 5092).

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

CRIMINAL DEPUTIES

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

Eric Richey

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

CHIEF CIVIL DEPUTY

Karen Frakes

CIVIL DEPUTIES

Royce Buckingham
Christopher Quinn
George Roche
Brandon Waldron

CIVIL SUPPORT ENFORCEMENT DEPUTIES

Janelle Wilson/Lead
Dionne Clasen

APPELLATE DEPUTIES

Kimberly Thulin
Hilary Thomas

ADMINISTRATOR

Vanessa Martin

MEMORANDUM

TO: Whatcom County Council
FROM: Brandon Waldron, Senior Civil Deputy Prosecuting Attorney
DATE: July 22, 2021
RE: ESHB 1054

The state legislature passed a number of “police reform” bills during the 2021 legislative session. Included in these was ESHB 1054, also called the “tactics bill.” One of the sections of ESHB 1054 prohibits law enforcement agencies from acquiring or using “military equipment.” “Military equipment is defined as follows:

(3)(a) “Military equipment means firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

The plain text of ESHB 1054 makes two less lethal devices illegal, in particular: the 12-gauge shotgun and the 40mm launcher. Both devices were less lethal options that the Whatcom County Sheriff’s Office previously had at their disposal. The shotguns were used to deploy less lethal beanbag rounds, and the 40mm launchers were used to deploy soft impact rounds. However, both the shotguns and the launcher are greater than .50 caliber, as measured by the internal diameter or bore of a gun barrel. Due to the legislative prohibition on these types of devices, the Whatcom County Sheriff’s Office will need to find other options for less lethal devices that fit within the confines of ESHB 1054.

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3317

Fund 1

Cost Center

Originator: Rodger Funk

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Legislative Mandates -Less Lethal BolaWrap

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6510	Tools & Equip	\$13,552
	Request Total		\$13,552

1a. Description of request:

The proposal is to acquire 10 BolaWrap less lethal tools.

1b. Primary customers:

All commissioned deputies of the Whatcom County Sheriff's Office.

2. Problem to be solved:

The state legislature passed a number of "police reform" bills during the 2021 legislative session. Included in these was ESHB 1054, also called the "tactics bill" and ESHB 1310, which is an ACT relating to permissible use of force by law enforcement. One of the sections of ESHB 1054 prohibits law enforcement agencies from acquiring or using "military equipment." "Military equipment is defined as follows:

(3)(a) "Military equipment means firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.

The plain text of ESHB 1054 makes two less lethal devices illegal, in particular: the 12-gauge shotgun and the 40mm launcher. Both devices were less lethal options that the Whatcom County Sheriff's Office previously had at their disposal. The shotguns were used to deploy less lethal beanbag rounds, and the 40mm launchers were used to deploy soft impact rounds. However, both the shotguns and the launcher are greater than .50 caliber, as measured by the internal diameter or bore of a gun barrel.

The Whatcom County Prosecuting Attorney advised in attached memo, "Due to the legislative prohibition on these types of devices, the Whatcom County Sheriff's Office will need to find other options for less lethal devices that fit within the confines of ESHB 1054."

The WCSO uses less lethal launchers to provide a safer way to gain control over persons involved in potentially lethal encounters. Without the less lethal projectile deputies have to move into close proximity to armed individuals if they want to gain control over the individual. This close proximity is often a causal factor in the use of lethal force.

Included in ESHB 1310, regarding permissible use of force, is Section 3 (2)(d)(e) which states:

- (d) When possible, use available and appropriate less lethal alternatives before using deadly force; and
- (e) Make less lethal alternatives issued to the officer reasonably available for their use.

The Whatcom County Sheriff's Office must provide our deputies less-lethal devices to comply with State law, and ensure the deputies have the necessary tools and equipment to safely de-escalate incidents and

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3317

Fund 1

Cost Center

Originator: Rodger Funk

take control of persons while avoiding the use of deadly force.

The BolaWrap is described as, "a pre-escalation apprehension tool that safely and humanely restrains resisting subjects from a distance". The BolaWrap is a device that provides deputies another less-lethal option intended to restrict the movements of an individual.

3a. Options / Advantages:

The BolaWrap is a new technology for less-lethal equipment. This device is a lower level of force than the FN303 or taser. This device is an option due to the requirement of the new legislation to use the least amount of force necessary and to provide less-lethal options to our deputies. BolaWrap is a low level of force that minimizes injury to all involved.

3b. Cost savings:

The cost savings are not easily measured. The cost and effect of a lethal police encounter within a community is immense. The ability to disarm or contain an armed person with less lethal force could save lives

4a. Outcomes:

Upon receiving the BolaWrap the WCSO will equip our deputies with a this less lethal device designed to save lives and comply with state law.

4b. Measures:

Successful deployment and utilization of the BolaWrap will provide positive outcomes by being in compliance with state law and having less lethal tools necessary to de-escalate and preserve human life.

5a. Other Departments/Agencies:

No.

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

6. Funding Source:

Washington State Funding for Whatcom County Criminal Justice Legislation.
Authorized under Section 740, Chapter 334, Laws of 2021 (ESSB 5092).

WHATCOM COUNTY PROSECUTING ATTORNEY

CHIEF CRIMINAL DEPUTY

Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY

Dona Bracke

CRIMINAL DEPUTIES

David Graham
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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

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CIVIL SUPPORT ENFORCEMENT DEPUTIES

Janelle Wilson/Lead
Dionne Clasen

APPELLATE DEPUTIES

Kimberly Thulin
Hilary Thomas

ADMINISTRATOR

Vanessa Martin

MEMORANDUM

TO: Whatcom County Council
FROM: Brandon Waldron, Senior Civil Deputy Prosecuting Attorney
DATE: July 22, 2021
RE: ESHB 1054

The state legislature passed a number of “police reform” bills during the 2021 legislative session. Included in these was ESHB 1054, also called the “tactics bill.” One of the sections of ESHB 1054 prohibits law enforcement agencies from acquiring or using “military equipment.” “Military equipment is defined as follows:

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The plain text of ESHB 1054 makes two less lethal devices illegal, in particular: the 12-gauge shotgun and the 40mm launcher. Both devices were less lethal options that the Whatcom County Sheriff’s Office previously had at their disposal. The shotguns were used to deploy less lethal beanbag rounds, and the 40mm launchers were used to deploy soft impact rounds. However, both the shotguns and the launcher are greater than .50 caliber, as measured by the internal diameter or bore of a gun barrel. Due to the legislative prohibition on these types of devices, the Whatcom County Sheriff’s Office will need to find other options for less lethal devices that fit within the confines of ESHB 1054.



MEMORANDUM

TO: Finance Department
FROM: Cathy Halka, Legislative Analyst
RE: Supplement Budget Request - Response to the COVID-19 pandemic
DATE: September 7, 2021

Please process the attached budget amendment request. I'd like this item to be introduced on the September 28, 2021 Council agenda.

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.

On September 14, 2021, Council will discuss an item (AB2021-525) to finalize an RFP for consultant services to complete the review and report.

This budget amendment (if approved by Council) will facilitate moving forward the RFP, selecting a consultant, and completing the project.

Please contact Cathy Halka at extension 5019, if you have any questions or concerns.

Supplemental Budget Request

Status: Pending

Council

Suppl ID #: 3298

Fund 1

Cost Center 1100

Originator: Cathy Halka

Expenditure Type: Ongoing

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: COVID Pandemic Response Review

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6630.902	Professional Services	\$100,000
	Request Total		\$100,000

1a. Description of request:

The Whatcom County Council adopted Ordinance 2021-045 on July 13, 2021 to establish an independent commission to review our community's response to the COVID-19 pandemic and identify lessons learned and opportunities for improvement. On September 14, 2021, Council Committee of the Whole approved staff to submit a budget supplement of \$100,000. This budget supplement will fund the consultant contract to complete the review.

1b. Primary customers:

Businesses and residents in Whatcom County

2. Problem to be solved:

A review of the pandemic response will enable the county to be better prepared for the next public emergency.

3a. Options / Advantages:

An independent review of county operations and community coordination will provide insight for improvements.

3b. Cost savings:

Identifying lessons learned and opportunities for improvement will help the county save time and money when called upon to respond to the next public emergency.

4a. Outcomes:

The consultant will create a final report including data gathered, recommendations, and updates suggested for the Emergency Management Plan.

4b. Measures:

Success of this effort will be the delivery of a final report with recommendations for the next emergency response and for the next update to the Emergency Management Plan.

5a. Other Departments/Agencies:

All staff participating in the pandemic response will be called upon to provide information and feedback to the consultant for this effort, including Health Department, Information Technology, Sheriff's Office, and other partner agencies in Whatcom County.

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

The special commissioner/consultant will work with key health department and emergency management staff, as well as staff from partner agencies, to receive data and feedback.

6. Funding Source:

General Fund

Tuesday, September 14, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Parks & Recreation

Suppl ID # 3292

Fund 1

Cost Center 6003

Originator: Christ Thomsen

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Tennant Lake Tower Camera

X

Department Head Signature (Required on Hard Copy Submission)

8-31-21

Date

Costs:	Object	Object Description	Amount Requested
	4367.1000	Donations	(\$6,000)
	6320.002	Office & Op Supplies	\$1,239
	6610	Contractual Services	\$3,261
	6860	Equipment Rental	\$1,500
	Request Total		\$0

1a. Description of request:

This request is for the expenditure authority for supplies, materials, contractual services, and equipment rental with offsetting donations from the Whatcom Parks & Recreation Foundation. The Foundation receives and administers donations to benefit parks and recreation in Whatcom County. The Foundation holds a donation account for the Parks & Recreation Department.

The Parks & Recreation Department has identified \$6,000.00 in expenditures for the 2021 fiscal year eligible for reimbursement through the Foundation.

The materials, supplies, contractual services, and equipment rental will be utilized in completing a project to replace the wildlife observation system at the Tennant Lake Tower. The project is a joint effort between Whatcom County Parks & Recreation and the Washington Department of Fish & Wildlife to install a replacement camera on the park's observation tower for visitors to observe wildlife and wetland features at Tennant Lake.

This camera system is a compliance requirement for the tower to meet ADA accommodations.

1b. Primary customers:

The 166,000 visitors annually to the Tennant Lake Interpretive Center

2. Problem to be solved:

The Parks & Recreation Department desires to receive monetary donation being managed by the Whatcom Parks & Recreation Foundation to offset expenditures for this project.

3a. Options / Advantages:

Other options considered were utilizing Parks general fund budget allocations to complete the work or deferring the project to a future date.

3b. Cost savings:

A direct cost savings to the County of \$6,000 can be realized by utilizing funding held by the Foundation to complete this project.

4a. Outcomes:

The outcome is funding of expenditures to complete the replacement of the wildlife observation system at the Tennant Lake Tower in 2021.

4b. Measures:

Tuesday, August 31, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Parks & Recreation

Suppl ID # 3292

Fund 1

Cost Center 6003

Originator: Christ Thomsen

Outcomes are validated when acquisition of materials, supplies, contractual services, and equipment rentals are realized. Success is measured by the completion of the project in 2021.

5a. Other Departments/Agencies:

None.

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

Not applicable

6. Funding Source:

Donation held by the Whatcom Parks & Recreation Foundation.

Supplemental Budget Request

Status: Pending

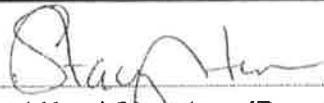
Auditor

Suppl ID # 3310 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 Security & Streaming Cameras

X



9/13/2021

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.9041	HAVA Election Security	(\$98,000)
	7410	Equipment-Capital Outlay	\$98,000
	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. To address these concerns, we are proposing a new security camera system be installed in the Election Voting Center and Auditor's office. The new security camera system offers visual and recorded coverage of all entry and exit doors throughout the Election Voting Center and Auditor's office. We are also adding a streaming camera to the Auditor's office election front vault area for online observing during each election.

1b. Primary customers:

Auditor Staff and voters.

2. Problem to be solved:

Whatcom County received a HAVA Election Security Grant in 2020. The Secretary of State's office identified the Elections Voting Center and the Auditor's office as areas that would benefit from additional security. The installation of the 15 cameras will enhance security overall.

3a. Options / Advantages:

There are no other options.

3b. Cost savings:

N/A

4a. Outcomes:

Security and streaming cameras will be installed and operational by year end 2021.

4b. Measures:

Fourteen (14) newly installed security cameras will provide visual recorded coverage of the Elections Voting Center and Auditor's office entry & exit doors complete with 24-7 recording capability. One (1) additional streaming camera will be installed in the Auditor's office front vault to offer the public easy live stream observation during each election.

5a. Other Departments/Agencies:

All installations will be coordinated with County Facilities and Information Technology.

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

Rob Ney and Perry Rice will assist to coordinate installations.

6. Funding Source:

HAVA Election Security Grant

Monday, September 13, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Administrative Services

Administration

Suppl ID # 3312 Fund 138 Cost Center Originator: Tawni Helms

Year 2 2022 Add'l FTE ☐ Priority 1

Name of Request: Public Defender additional office space rent

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6870	Space Rental	\$30,000
	Request Total		\$30,000

1a. Description of request:

Rental space is being requested to accommodate the addition of 9 new Public Defender staff to deal with the court case backlog caused by the pandemic. The unfinished second floor of the Public Defender's building will be remodeled to accommodate the increased staff and need for attorney/client private interview rooms; however, until the remodel is accomplished there is an immediate need for more office space.

1b. Primary customers:

Indigent defendants in the Whatcom County Superior and District Courts will benefit from this additional office space. Providing space for new Public Defenders Office staff will have a positive impact on the courts and P.A.'s office as well because more cases will be processed.

2. Problem to be solved:

The Public Defenders Office is hiring nine additional attorneys to help mitigate the significant backlog of cases. These new attorneys will need a place to work until the 2nd floor remodel is accomplished. Creating new office space will serve to meet the additional space needs of the department.

3a. Options / Advantages:

Remote work opportunities were also being considered but does not address the need for client/attorney privacy. New attorneys will also benefit from being able to work in the same location as other staff rather than starting a new job remotely. Leasing rental space to accommodate increased staffing until the remodel is complete will ensure the critical work of the Public Defenders office will not be impacted.

3b. Cost savings:

n/a

4a. Outcomes:

New office space can be accomplished during the fall of 2021 so that new staff will have adequate accommodations upon hire.

4b. Measures:

Office space will be leased until the 2nd floor of the Central Plaza Building has been remodeled to accommodate increased staffing.

5a. Other Departments/Agencies:

Public Defender, AS-Facilities and AS-IT to set up the new office space.

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

Rob Ney & Starck Folis

6. Funding Source:

ARPA Fund

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 3286 Fund 326 Cost Center 32600 Originator: Marianne Caldwell

Year 1 2021 Add'l FTE ☐ Priority 1

Name of Request: Trf in support of Central Plaza Tenant Improvement

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$400,000
	Request Total		\$400,000

1a. Description of request:

Transfer to fund the Central Plaza Tenant Improvement project. See companion project budget ordinance and exhibit A - supplemental # 3281

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:

Real Estate Excise Tax I Fund

Tuesday, September 14, 2021

Rpt: Rpt Suppl Regular

PROPOSED BY: Executive
INTRODUCTION DATE: 09/28/21

**ORDINANCE NO.
AMENDMENT NO. 15 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			
Sheriff	16,967	-	16,967
Sheriff	18,976	-	18,976
Sheriff	55,945	-	55,945
Sheriff	13,552	-	13,552
County Council	100,000	-	100,000
Parks & Recreation	6,000	(6,000)	-
Total General Fund	211,440	(6,000)	205,440
Election Reserve Fund	98,000	(98,000)	-
American Rescue Plan Act Fund	30,000	-	30,000
Real Estate Excise Tax I Fund	400,000	-	400,000
Total Supplemental	739,440	(104,000)	635,440

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

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

Agenda Bill Master Report

File Number: AB2021-549

File ID:	AB2021-549	Version:	1	Status:	Introduced
File Created:	09/15/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance establishing the Central Plaza Tenant Improvements Fund and establishing a project based budget for the Central Plaza Tenant Improvements Project

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request establishes the Central Plaza Tenant Improvements Fund and requests a project based budget in the amount of \$400,000 for the remodel of the second floor of the Central Plaza building.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Proposed Ordinance, Exhibit A

PROPOSED BY: Executive
INTRODUCTION DATE: 09/28/21

ORDINANCE NO. _____

**ORDINANCE ESTABLISHING THE CENTRAL PLAZA TENANT IMPROVEMENTS FUND
AND ESTABLISHING A PROJECT BASED BUDGET FOR THE CENTRAL PLAZA TENANT
IMPROVEMENTS PROJECT**

WHEREAS, the Public Defender's Office currently has the need to increase their office space in the Central Plaza Building by adding offices for private client/attorney meetings, and

WHEREAS, the Public Defender's Office will also be adding a significant number of temporary staff to mitigate the COVID-related court backlog, and

WHEREAS, space is available to remodel on the second floor of the Central Plaza Building where the Public Defender's Office is located, and

WHEREAS, funding is available from Real Estate Excise Tax I Fund to fund the project, and

WHEREAS, Section 6.80 of the Whatcom County Home Rule Charter allows for project-based capital budget appropriation ordinances that lapse when the project has been completed or abandoned or when no expenditure or encumbrance has been made for three (3) years,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a new fund is hereby established effective October 12, 2021 titled Central Plaza Tenant Improvements Fund. This fund shall be used to account for the revenues and expenditures related to remodeling the second floor of the Public Defender's Office, and

BE IT FURTHER ORDAINED by the Whatcom County Council that the Central Plaza Tenant Improvements Fund is approved as described in Exhibit A with a project budget of \$400,000.

ADOPTED this ____ day of _____, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

() Approved () Denied

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

Satpal Sidhu, County Executive
Date: _____

EXHIBIT A

Supplemental Budget Request

Status: Pending

Administrative Services

Facilities Management

Suppl ID # 3281

Fund

Cost Center

Originator: Rob Ney

Year 1 2021

Add'l FTE ☐

Priority 1

Name of Request: Central Plaza Tenant Improvements

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6190	Direct Billing Rate	\$55,396
	6630	Professional Services	\$50,000
	7190	Other Miscellaneous	\$4,000
	7350	Buildings & Structures	\$290,604
	8301	Operating Transfer In	(\$400,000)
	Request Total		\$0

1a. Description of request:

The Public Defender's Office is seeking approval to increase their office space by adding offices on the second floor. This will address their need for more offices where client attorney meetings can take place in privacy. This will also help to accommodate the need to house temporary staff being hired to address the significant backlog in this department. Rental space will be required to accommodate staff during construction - Refer to ASR 3312

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 will benefit from this additional office space. Providing space for new Public Defenders Office staff will have a positive impact on the courts and P.A.'s office as well because more cases will be processed.

2. Problem to be solved:

The Public Defenders Office is in need of more offices that offer privacy for client/attorney interviews. The Public Defenders Office will also be adding temporary staff to address the significant backlog of cases. Creating new office space will serve to meet current and growing needs of this department.

3a. Options / Advantages:

The County is looking into leasing office space for the new temporary staff. However, leased office space has been difficult to find. Remote work opportunities are also being considered but does not address the need for client/attorney privacy for current staffing. The addition of five new offices will help to accommodate existing and growing space needs.

3b. Cost savings:

n/a

4a. Outcomes:

The second floor of the Central Plaza will be captured to add new offices for the Public Defender's Office. This will allow us to provide adequate working space for existing staff and help to accommodate the temporary employees being hired to address and process the significant backlog of cases caused by the pandemic.

4b. Measures:

Office space will be created and utilized by staff.

Tuesday, September 14, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Administrative Services

Facilities Management

Suppl ID # 3281

Fund

Cost Center

Originator: Rob Ney

5a. Other Departments/Agencies:

Public Defender will be impacted by the construction and may need to lease additional space or new staff members

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

Rob Ney & Starck Follis

6. Funding Source:

REET I



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-579

File ID:	AB2021-579	Version:	1	Status:	Agenda Ready
File Created:	09/28/2021	Entered by:	AKell@co.whatcom.wa.us		
Department:	Council Office	File Type:	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

Primary Contact Email: sdraper@co.whatcom.wa.us <<mailto:sdraper@co.whatcom.wa.us>>

TITLE FOR AGENDA ITEM:

Request approval for the County Executive to enter into an interagency agreement between Whatcom County Flood Control Zone District and the State of Washington Department of Ecology for Whatcom Marine Resources Committee (MRC) Operations and Projects (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The grant agreement will be used to fund administrative support and action projects for the Whatcom County Marine Resources Committee through the period of October 1st, 2021 through September 30th, 2023

HISTORY OF LEGISLATIVE FILE

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

Attachments: Staff memo, Proposed agreement

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**




NATURAL RESOURCES

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

MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

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

DATE: September 21, 2021

RE: State of Washington Department of Ecology Grant Agreement SEANWS-2021-WhCoPW-00004 Northwest Straits Project: Marine Resources Committee (MRC) Operations and Projects

Public Works respectfully requests that the County Executive, and the County Council, acting as the Flood Control Zone District Board of Supervisors, enter into an interagency agreement between the State of Washington Department of Ecology and the Whatcom County Flood Control Zone District for Whatcom Marine Resources Committee (MRC) Operations and Projects.

Background and Purpose

This grant agreement will fund administrative support and action projects for the Whatcom County Marine Resources Committee including remote beach cleanups, water quality monitoring, bull kelp surveys, forage fish spawning surveys, and monitoring of a pilot Olympia oyster restoration project.

Funding Amount and Source

This grant agreement with Washington Department of Ecology provides the County with \$196,000.00 for administrative and technical support to the MRC and to implement action projects. No match is required.

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

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
202109025

Originating Department:	Public Works		
Division/Program: (i.e. Dept. Division and Program)	Natural Resources -- Whatcom Marine Resources Committee - 907010		
Contract or Grant Administrator:	Austin Rose, Planner I		
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? SEANWS- 2021- WCPW- Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): 00004 CFDA#: 66.456			
Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____			
Is this contract the result of a RFP or Bid process? Contract Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Cost Center: 813001			
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): \$ 196,000.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ _____		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
Summary of Scope: This grant agreement will fund administrative support and action projects for the Whatcom County Marine Resources Committee.			
Term of Contract: Two years		Expiration Date: 09/30/2023	

Contract Routing:	1. Prepared by: Austin Rose	Date: 09/21/21
	2. Attorney signoff: Christopher Quinn	Date: 9/23/2021
	3. AS Finance reviewed: M Caldwell	Date: 9/23/21
	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: _____



Whatcom County
Contract #202109025

Agreement No. SEANWS-2021-WhCoPW-00004

SHORELANDS NORTHWEST STRAITS AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY

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

GENERAL INFORMATION

Project Title:	Whatcom Marine Resources Committee (MRC) Operations and Projects
Total Cost:	\$196,000.00
Total Eligible Cost:	\$196,000.00
Ecology Share:	\$196,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	10/01/2021
The Expiration Date of this Agreement is no later than:	09/30/2023
Project Type:	Northwest Straits Grant

Project Short Description:

The Whatcom MRC works to achieve important goals of resource conservation and habitat protection within the Northwest Straits, through implementing priorities of the Puget Sound Action Agenda. This grant will support the Whatcom MRC operations and projects for 2021-2023.

Project Long Description:

The MRC is focused on two Action Agenda strategic initiatives: 1) protecting and restoring marine habitats; 2) restore and reopen shellfish beds. In addition to projects, this funding provides education and outreach programming and administrative support for the Whatcom MRC to accomplish these goals.

Overall Goal:

The overall goal is to implement projects that improve the health of marine waters, shorelines, and marine resources of

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Whatcom County.

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

RECIPIENT INFORMATION

Organization Name: Whatcom County

Federal Tax ID: 91-6001383

DUNS Number: 060044641

Mailing Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Physical Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

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

Contacts

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Project Manager	<p>Austin Rose Planner I - Marine Resources Committee Staff</p> <p>322 N. Commercial St Bellingham, Washington 98225 Email: arose@co.whatcom.wa.us Phone: (360) 778-6286</p>
Billing Contact	<p>Christy Fowler</p> <p>322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214</p>
Authorized Signatory	<p>Satpal Singh Sidhu County Executive</p> <p>311 Grand Avenue, Suite 108 Bellingham, Washington 98225 Email: ssidhu@co.whatcom.wa.us Phone: (360) 778-5200</p>

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Shorelands
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Shorelands
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Sasha Horst Breazeale-Padilla Bay Interp. Center 10441 Bayview Edison Rd. Mt Vernon, Washington 98273-7242 Email: horst@nwstraits.org Phone: (360) 428-1084
Financial Manager	Cindy James PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645
Technical Advisor	Dana Oster Breazeale-Padilla Bay Interp. Center 10441 Bayview Edison Rd. Mt Vernon, Washington 98273-7242 Email: DAOS461@ecy.wa.gov Phone: (360) 428-1043

AUTHORIZING SIGNATURES

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

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

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

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

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

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

Washington State
Department of Ecology

Whatcom County

By: _____

By: _____

Joenne McGerr
Shorelands
Program Manager
Date

Satpal Singh Sidhu
County Executive
Date

Template Approved to Form by
Attorney General's Office

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 1

Task Cost: \$158,300.00

Task Title: MRC Operations

Task Description:

The RECIPIENT will provide necessary project oversight to complete the scope of work in compliance with this ECOLOGY agreement, which includes project coordination, project management, and project administration.

- MRC operations: Schedule, prepare/distribute agenda and post public notices of MRC meetings; prepare and distribute minutes of MRC meetings; maintain current MRC membership list; recruit MRC members (if allowable by county) and provide onboarding for new members; track volunteer hours, in-kind support and leveraged funds and provide information quarterly to Northwest Straits Commission staff; communicate regularly with NWSC staff.
- MRC communication: Maintain MRC website (including current meeting schedules, agendas and projects); communicate regularly with county council/commission; increase awareness of the purpose of the MRC and its role in the county; communicate with relevant audiences about the projects and programs of the MRC.
- MRC grant administration: Ensure that grant agreement is implemented on schedule with satisfactory deliverables; prepare progress reports, final report and completion report for Northwest Straits Commission; track and administer budget, including spending out on deadlines per state and federal fiscal years; manage sub-contracts as applicable and provide copies to Northwest Straits Commission grant manager; prepare MRC workplan and MRC annual report to summarize MRC activities and progress; communicate revisions to or concerns about carrying out the agreement to Northwest Straits Commission staff.
- MRC training and representation: MRC members will attend Northwest Straits Initiative annual conference; MRC staff will participate in regular meetings and forums; a representative of the MRC will attend each Northwest Straits Commission meeting.
- MRC Advisory: MRCs will serve as a resource to county government to help identify local marine conservation and protection needs and recommend remedial actions; MRCs will advise county council/commission/executive on local and regional marine issues as appropriate and as requested.
- Local Integrating Organization: Where applicable, the MRC will participate in meetings and/or operations of the Local Integrating Organization (LIO) in order to participate in the planning process and action agenda update, including identification of Near Term Actions.

Task Goal Statement:

To carry out administrative and operational functions in support of the mission (including work plan preparation, developing and preparing project proposals, programmatic staff support, project monitoring and performance tracking, and communications), travel, planning and participation in training opportunities.

Task Expected Outcome:

The funds from this grant assist the MRC in the following ways:

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

- MRCs have a documented process to recruit and train members to be active participants and contributors to the work of the MRC.
- MRC project information is accessible and shared regularly through presentations, meetings, and web site.
- The MRC meets regularly in a public forum that is promoted locally to community members and decision makers.
- The MRC is informed of and contributes to the work of the Northwest Straits Commission.
- MRC volunteer hours and other local contributions to their work is documented and shared with the Commission and the County.
- The work of the MRC is planned in advance through an annual workplan and documented in an annual report.
- MRC members and staff contribute to other relevant local and regional processes related to marine issues.

Recipient Task Coordinator: Austin Rose**MRC Operations****Deliverables**

Number	Description	Due Date
1.1	Quarterly Progress Report	
1.2	Quarterly Reporting of Meeting Agendas , Minutes and Reports to the Commission	
1.3	Matching Funds/Volunteer Time Tracking	
1.4	Annual Workplan	
1.5	Annual Report	

SCOPE OF WORK

Task Number: 2 **Task Cost: \$2,900.00**

Task Title: 2. Beach seine with schools

Task Description:

Whatcom MRC will use sampling protocols developed by the Lummi Nation Natural Resources Department and Washington Department of Fish and Wildlife to hold up to three demonstration beach seine events at selected shoreline locations in Whatcom County during peak juvenile salmon outmigration period.

The target audience for this demonstration project is 4-5th grade students in Bellingham elementary schools. The MRC will share the opportunity with local tribal schools in effort to expand participation in following years.

Whatcom MRC will coordinate with the school district, Lummi Natural Resources staff and volunteers to plan and carry out a pre-event lesson and evaluation, conduct beach seine event(s), and complete post-event evaluation from teacher(s) and students.

Task Goal Statement:

The goal of this project is to increase awareness and understanding of the importance of the intertidal zone for migrating juvenile salmon and other marine species.

Task Expected Outcome:

Develop a pre-event classroom lesson plan and a beach seine day plan.

Coordinate with Lummi Nation to provide a short talk by a Tribal elder or guest scientist.

Attendance by 25 or more children at up three seining events.

Create a pre- and post-event evaluation for students and teachers to evaluate the effectiveness of the field event.

Recipient Task Coordinator: Mike McKay

2. Beach seine with schools

Deliverables

Number	Description	Due Date
2.1	Recipient will submit copy of protocols and catch reporting forms and upload to EAGL.	
2.2	Recipient will submit event dates, site locations and participant summary (number of classes and students) and upload in EAGL.	
2.3	Recipient will submit year one final report (Including copy of pre and post-event materials and plans; copies of pre- and post-event evaluations from teachers and students; photos of beach event(s)) and upload in EAGL.	

SCOPE OF WORK

Task Number: 3 Task Cost: \$20,800.00

Task Title: 3. Monitoring

Task Description:

3.1 Bull kelp: Working in collaboration with the NW Straits Commission, using existing monitoring protocols, Whatcom MRC will monitor floating bull kelp beds at five locations in Whatcom County at least once annually during the July–September growing season to provide information on the status of floating kelp communities in Whatcom County. Locations include: SW Lummi Island, Aiston Preserve, Cherry Point/Gulf Rd, Point Whitehorn, and Alden Bank. Whatcom MRC will explore use of a motorized boat to survey at Alden Bank due to the current strength at that location.

3.2 Forage fish: Whatcom MRC will participate in a regional effort to characterize populations of forage fish species that spawn on Puget Sound beaches: Pacific sand lance and surf smelt. WA Department of Fish & Wildlife (WDFW) is conducting wide scale spawning surveys and Whatcom MRC will serve as a local partner and expand the impact of the study. Whatcom MRC will hire a county intern to assist with recruiting and training volunteers to conduct monthly spawning surveys at two priority beaches (Marine Park and Little Squalicum Beach) using existing protocols. Volunteers will obtain beach substrate samples and conduct forage fish egg presence/absence analysis on samples using the vortex method for separation of forage fish eggs. Both the sample collection and egg presence/absence analysis will follow the protocols developed by WDFW. Surveys will occur monthly on the lowest tide practicable, October 2021–September 2023.

3.3 N. Chuckanut Bay Pollution Identification and Correction (PIC): N. Chuckanut Bay is a recreational shellfish harvesting area supporting many species of clams. WA Department of Health (DOH) closed the harvest area in 1994 due to poor water quality and sewage disposal conditions. Whatcom MRC will continue the PIC project in the area, in partnership with local and state agencies. Whatcom MRC will conduct community outreach/engagement on best management practices for healthy water quality; water quality monitoring, data reporting on a bi-weekly basis. Following protocols in the N. Chuckanut Bay PIC Water Quality Monitoring: Fecal Coliform Quality Assurance Project Plan (QAPP), sampling will be done bi-weekly at 7 freshwater sites and 6 marine sites from October 2021–September 2023. Monthly sampling will occur if bi-weekly is not possible due to weather or field staff capacity. Monitoring efforts will continue under the recommendation of DOH based on patterns of water quality results.

3.4 Olympia oyster: Whatcom MRC will continue a pilot project in N. Chuckanut Bay to establish a self-sustaining population of Olympia oysters while enhancing habitat complexity and diversity by collecting physical and biological data to determine the status of restoration potential following the N. Chuckanut Bay Pilot Olympia Oyster Restoration Project QAPP. Annual monitoring events will involve students from local colleges/universities, if possible. The MRC will develop an evaluation of oyster retention within pilot restoration plots, and changes in habitat characterization will be determined by assessing change in restoration plots against the identified reference plot. The MRC will place at least 2 bags of seasoned Pacific oyster shell (approximately 50 shells/plot) within the test plots to monitor natural recruitment of larvae against shell substrate. The MRC will attempt to monitor bi-weekly larval settlement patterns during the summer using stacks of ceramic tiles.

Task Goal Statement:

3.1 Bull kelp: To support a larger regional kelp monitoring program and provide a better understanding of kelp distribution, bed sizes, kelp speciation, and health within the Salish Sea.

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Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

3.2 Forage fish: The goal of forage fish monitoring is to support statewide sampling and to inform potential soft shore restoration projects for Whatcom County.

3.3 N. Chuckanut Bay Pollution Identification and Correction (PIC): Provide WA Department of Health (DOH) with sufficient data to demonstrate improvement in water quality, to encourage DOH to appropriately modify the recreational shellfish harvesting restrictions, and to continue outreach and engagement with the Chuckanut Village community so that observed water quality improvements are maintained.

3.4 Olympia oyster: Engage local community members and students to inform restoration potential for a self-sustaining native Olympia oyster population in North Chuckanut Bay.

Task Expected Outcome:

3.1 Bull kelp: Completion of at least one bull kelp survey at five locations in Whatcom County.

3.2 Forage fish: A county-based intern will help recruit at least five volunteers and assist with monthly surveys. Volunteers will help collect and process samples. The MRC will share data collected with WDFW.

3.3 N. Chuckanut Bay Pollution Identification and Correction (PIC): Volunteers will be recruited to conduct water quality monitoring; Community residents will receive one newsletter with messaging on the relationship between water quality and healthy shellfish harvest areas; water quality results will be available on a monthly basis on the MRC and other partner websites.

3.4 Olympia oyster: Monitoring completed to assess oyster abundance, to provide information on population recruitment; and the live oyster size distribution.

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

Recipient Task Coordinator: 3.1 Eleanor Hines, 3.2 Kathy Ketteridge, 3.3 Dan Sulak, 3.4 Paul Troutman**3. Monitoring****Deliverables**

Number	Description	Due Date
3.1	Recipient will submit the 2022 Bull kelp QAPP covering motorized boat-based surveys and upload into EAGL.	
3.2	Recipient will submit the 2022 Kayak Based Bull Kelp Monitoring QAPP addendum and upload into EAGL.	
3.3	Recipient will submit the 2022 Bull kelp monitoring workplan and upload into EAGL.	
3.4	Recipient will submit the 2022 Bull kelp survey final report and upload into EAGL.	
3.5	Recipient will submit the 2022 Forage Fish Survey QAPP addendum and upload into EAGL.	
3.6	Recipient will submit the 2022 Forage Fish final report and upload into EAGL.	
3.7	Recipient will submit the 2023 Forage Fish Survey QAPP addendum and upload into EAGL.	
3.8	Recipient will submit the 2023 Forage Fish final report and upload into EAGL.	
3.9	Recipient will submit the 2022 N. Chuckanut Bay PIC Water Quality Monitoring: Fecal Coliform QAPP addendum and upload into EAGL.	
3.10	Recipient will submit the 2022 N. Chuckanut Bay Final Report: data, water quality summaries, outreach and upload into EAGL.	
3.11	Recipient will submit the 2023 N. Chuckanut Bay PIC Water Quality Monitoring: Fecal Coliform QAPP addendum and upload into EAGL.	
3.12	Recipient will submit the 2023 Final Report: data, water quality summaries, outreach and upload into EAGL.	
3.13	Recipient will submit the 2022 Olympia Oyster Population Abundance and Habitat Characteristics Survey QAPP and upload into EAGL.	
3.14	Recipient will submit the 2022 Olympia Oyster Final Report and upload into EAGL.	
3.15	Recipient will submit the 2023 Olympia Oyster Population Abundance and Habitat Characteristics Survey QAPP and upload into EAGL.	
3.16	Recipient will submit the 2023 Olympia Oyster Final Report and upload into EAGL.	

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 4

Task Cost: \$11,100.00

Task Title: 4. Remote Beach Cleanup

Task Description:

Whatcom MRC will conduct volunteer-led remote beach cleanup on the southwest side of Lummi Island, Lummi Rocks in 2022 and 2023. A volunteer solicitation will be developed and distributed electronically to approximately 300 volunteers, and will include education about impact of marine debris on shorelines and marine species, the importance of beach cleanups to reduce litter, and raise awareness about litter and plastic pollution. The MRC will share the solicitation through the MRC listserv and other outlets.

Whatcom MRC will conduct beach cleanups through use of a landing craft to charter volunteers to the sites. Volunteers will use marine debris tracking apps to document the types of litter removed and the MyCoast app to report debris too large for removal by volunteers. The MRC will reach out to residents on Eliza Island and Cliffside Beach to assess whether a cleanup activity is needed.

Task Goal Statement:

The goal of this project is improve water quality and marine habitat in the Salish Sea by removing debris from up to 2,000 feet of shoreline.

Task Expected Outcome:

Increased community awareness about the problem of litter and plastic pollution. The MRC will be viewed as a community resource that takes action to improve the marine environment. Remote shorelines in Whatcom County will have less marine debris.

Recipient Task Coordinator: Bob Cecile**4. Remote Beach Cleanup****Deliverables**

Number	Description	Due Date
4.1	Recipient will upload a copy to EAGL of the 2022 volunteer recruitment and education mailer.	
4.2	Recipient will submit and upload the Year 1 Final Report to EAGL.	
4.3	Recipient will upload a copy to EAGL of the 2023 volunteer recruitment and education mailer.	
4.4	Recipient will submit and upload the Year 2 Final Report to EAGL.	

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

SCOPE OF WORK

Task Number: 5

Task Cost: \$2,900.00

Task Title: 5. Rain Garden Development

Task Description:

Rain gardens are a green infrastructure and low impact development (LID) technology used to reduce nutrients and contaminants from stormwater runoff. By decreasing pollution loads that eventually flow into surrounding marine waters, rain gardens improve water quality and benefit eelgrass beds, shellfish beds, and other nearshore and marine habitats.

Whatcom MRC will gather data on stormwater problem areas and prioritize site-specific locations where stormwater is likely impacting marine water quality and would benefit from a rain garden or LID installation. The MRC will set criteria (including targeted pollutants, land use, land ownership, waterbody) and work with Whatcom County storm water engineers, City of Bellingham, and Port of Bellingham to identify drainage basins, rain garden size, and appropriate design standard. The resulting prioritization report will provide guidance to Whatcom MRC and other entities looking to pursue a similar project.

Task Goal Statement:

Identify and prioritize stormwater drainage basins near the marine shoreline adversely impacting the marine environment that would benefit from a rain garden or LID installation.

Task Expected Outcome:

A prioritization report for use by the Whatcom MRC and other entities interested in installing a rain garden in Whatcom County.

Recipient Task Coordinator: Bob Seaman and Bob Cecile**5. Rain Garden Development****Deliverables**

Number	Description	Due Date
5.1	Recipient will provide the prioritization of stormwater drainage basins near the marine shoreline and upload to EAGL.	

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

BUDGET**Funding Distribution EG220105**

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

Funding Title: MTCA-Marine Resources Committees 21-23 Funding Type: Grant
 Funding Effective Date: 10/01/2021 Funding Expiration Date: 06/30/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund:

Type: State

Funding Source %: 100%

Description: To distribute equally among the seven Puget Sound Marine Resources Committees.

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? Yes

MTCA-Marine Resources Committees 21-23	Task Total
MRC Operations	\$ 116,500.00
2. Beach seine with schools	\$ 900.00
3. Monitoring	\$ 6,200.00
4. Remote Beach Cleanup	\$ 5,500.00
5. Rain Garden Development	\$ 900.00

Total: \$ 130,000.00

State of Washington Department of Ecology
Agreement No: SEANWS-2021-WhCoPW-00004
Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
Recipient Name: Whatcom County

BUDGET

Funding Distribution EG220106

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

Funding Title: 2021-22 Puget Sound Partnership/EPA Funding Type: Grant
Funding Effective Date: 10/01/2021 Funding Expiration Date: 09/30/2022
Funding Source:

Title: Puget Sound Partnership/EPA

Fund:

Type: Federal

Funding Source %: 100%

Description:

Federal Awarding Agency: Environmental Protection Agency
Federal Awarding Agency Contact: Jennifer Grimm-Puget Sound Partnership
Federal Awarding Agency Phone: 360-485-7419
Federal Awarding Agency Email: Jennifer.grimm@psp.wa.gov
Federal Awarding Agency Address:

CFDA Catalog Name: National Estuary Program

CFDA Number: 66.456

FAIN:

Research Grant: No

Federal Award Date:

Total Federal Award Amount: \$0.00

Federal Funds Obligated To Recipient: \$37,000.00

Approved Indirect Costs Rate: Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

2021-22 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 19,500.00
2. Beach seine with schools	\$ 2,000.00
3. Monitoring	\$ 8,500.00
4. Remote Beach Cleanup	\$ 5,000.00
5. Rain Garden Development	\$ 2,000.00

Total: \$ 37,000.00

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

BUDGET**Funding Distribution EG220107**

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

Funding Title: 2022-23 Puget Sound Partnership/EPA

Funding Type: Grant

Funding Effective Date: 10/01/2022

Funding Expiration Date: 09/30/2023

Funding Source:

Title: Puget Sound Partnership/EPA

Fund:

Type: Federal

Funding Source %: 100%

Description:

Federal Awarding Agency:

Environmental Protection Agency

Federal Awarding Agency Contact:

Jennifer Grimm-Puget Sound Partnership

Federal Awarding Agency Phone:

360-485-7419

Federal Awarding Agency Email:

Jennifer.grimm@psp.wa.gov

Federal Awarding Agency Address:

CFDA Catalog Name:

National Estuary Program

CFDA Number:

66.456

FAIN:

Research Grant:

No

Federal Award Date:

Total Federal Award Amount:

\$0.00

Federal Funds Obligated To Recipient:

\$29,000.00

Approved Indirect Costs Rate:

Approved Rate Negotiated Between ECOLOGY and RECIPIENT: 0%

Recipient Match %:

0%

InKind Interlocal Allowed:

No

InKind Other Allowed:

No

Is this Funding Distribution used to match a federal grant?

Yes

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

2022-23 Puget Sound Partnership/EPA	Task Total
MRC Operations	\$ 22,300.00
2. Beach seine with schools	\$ 0.00
3. Monitoring	\$ 6,100.00
4. Remote Beach Cleanup	\$ 600.00
5. Rain Garden Development	\$ 0.00

Total: \$ 29,000.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
MTCA-Marine Resources Committees 21-23	0.00 %	\$ 0.00	\$ 130,000.00	\$ 130,000.00
2021-22 Puget Sound Partnership/EPA	0.00 %	\$ 0.00	\$ 37,000.00	\$ 37,000.00
2022-23 Puget Sound Partnership/EPA	0.00 %	\$ 0.00	\$ 29,000.00	\$ 29,000.00
Total		\$ 0.00	\$ 196,000.00	\$ 196,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

CREDIT AND ACKNOWLEDGEMENT

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display both the EPA and Puget Sound Partnership logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement [TBD] to Puget Sound Partnership. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

1. INTRODUCTION

The below provisions are not listed on OMB Standard Form 424B (Rev 4- 2012). These provisions apply only to Sub-recipients.

2. AUDIT REQUIREMENTS

Sub-recipient CONTRACTOR shall meet the provisions in Office of Management and Budget (OMB) Guidance, Subpart F, §200.501 (Audit Requirements), if the CONTRACTOR expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The CONTRACTOR shall forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to Ecology within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/facweb/>

3. COST PRINCIPLES/INDIRECT COSTS FOR STATE AGENCIES

GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements", if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate

Agreement No: SEANWS-2021-WhCoPW-00004

Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects

Recipient Name: Whatcom County

proposal in accordance with 2 CFR 200 Appendix VII.

4. CIVIL RIGHTS OBLIGATIONS

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on Standard Form 424B. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

5. NON DISCRIMINATION AND DISADVANTAGED, MBE, WBE BUSINESS ENTERPRISES ADDITIONAL REQUIREMENTS

CONTRACTOR agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement, contained in 40 CFR, Part 33. CONTRACTOR shall include the following provision in all subcontracts involving use of federal funds:

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

6. DRUG FREE WORKPLACE

CONTRACTOR (Sub-Recipient) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal award and keep this information on file during the performance of the award.

CONTRACTORS who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart

E. Recipient can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.

7. INTERNATIONAL TRAVEL (Including Canada)

All International Travel must be approved by the US Environmental Protection Agency's, Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

8. LEP (Limited English Proficiency) Title VI

As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the Sub-recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons."

The guidance can be found at

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

In accepting this contract, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA/PSP that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations. For example, if CONTRACTOR's

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Recipient Name: Whatcom County

responsibilities under this contract include gathering public input on an environmental issue, CONTRACTOR's communication with the public should attempt to minimize barriers that interfere with the ability of LEP persons to meaningfully participate.

9. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this CONTRACT. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. PEER REVIEW

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

11. REIMBURSEMENT LIMITATION

If CONTRACTOR expends more than the amount of the Environmental Protection Agency (EPA) funding in this agreement in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse PSP, nor its sub-recipients, for costs incurred in excess of the EPA approved budget.

12. SIX GOOD FAITH EFFORTS, 40 CFR, PART 33, SUBPART C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, service and supplies under an EPA financial assistance agreement, and to require that subrecipients, loan recipients, and prime contractor also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraph (a) through (e) of this section.

13. SUB-AWARDS

If CONTRACTOR (Sub-Recipient) makes sub-awards under this contract, CONTRACTOR is responsible for selecting its

Agreement No: SEANWS-2021-WhCoPW-00004

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sub-awardees and, if applicable, for conducting sub-award competitions. CONTRACTOR agrees to:

- Establish all sub-award agreements in writing;
- Maintain primary responsibility for ensuring successful completion of the approved project (Sub-Recipient cannot delegate or transfer this responsibility to a sub-awardee);
- Ensure that any sub-awards comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the sub-awardee;
- Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- Obtain Ecology's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- Obtain approval from Ecology for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

14. TRAFFICKING IN PERSONS AND TRAFFICKING VICTIM PROTECTION ACT OF 2000 (TVPA) AS AMENDED IN 22 U.S.C. 7104(g)

This provision applies only to a Sub-Recipient, and all sub-awardees of Sub-Recipient, if any. See page one (1) of this contract for determination of whether CONTRACTOR is a sub-recipient. Sub-Recipient shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the Sub-Recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

Sub-Recipient, and all sub-awardees of Sub-Recipient must inform Ecology immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

Federal agency funding this agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

15. UNLIQUIDATED OBLIGATIONS (ULO)

Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

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3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

For more details on FFATA requirements, see www.frs.gov <http://www.frs.gov>.

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

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

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1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232 <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

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GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

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

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff, volunteers, and contractors working at the project site.
- Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

Template Version 12/10/2020

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

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

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

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

Agreement No: SEANWS-2021-WhCoPW-00004
Project Title: Whatcom Marine Resources Committee (MRC) Operations and Projects
Recipient Name: Whatcom County

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Jon Hutchings, Public Works Director Date

Approved as to form:

Christopher Quinn by Akell 09/23/2021

Christopher Quinn Date
Senior Deputy Prosecuting Attorney – Civil Division

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-580

File ID:	AB2021-580	Version:	1	Status:	Agenda Ready
File Created:	09/28/2021	Entered by:	LCumming@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request permission for the County Executive to enter into a Joint Funding Agreement between the Whatcom County Flood Control Zone District (FCZD) and the United States Geological Survey (USGS) (Council acting as the Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This Joint Funding Agreement is for collecting stream-gaging data on a real-time basis for early flood warning and flood response, and covers six early warning gages on the Nooksack River and its upper forks, plus the Jones Creek gage and the Everson overflow gage at Main Street

HISTORY OF LEGISLATIVE FILE

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

Attachments: Staff memo, Proposed contract



MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Paula J. Harris, P.E., River and Flood Manager *PJH*
Gary Stoyka, Natural Resources Program Manager *gms*

DATE: September 21, 2021

RE: Joint Funding Agreement with United States Geological Survey

Enclosed are two (2) originals of a Joint Funding Agreement between the Whatcom County Flood Control Zone District (FCZD) and the United States Geological Survey (USGS) for your review and signature.

▪ **Background and Purpose**

The FCZD has worked cooperatively with the USGS for a number of years to collect stream-gaging data on a real-time basis for early flood warning and flood response. Financing of this program is provided on a cost-share basis through the USGS Cooperative Program. This Joint Funding Agreement covers the six early warning gages on the Nooksack River and its upper forks, plus the Jones Creek gage and the Everson overflow gage at Main Street. The Jones Creek gaging station was installed in 2009 to provide advance warning for the Acme Fire District (AFD) in responding to a debris flow event on Jones Creek. The Everson Overflow gaging station was installed in 2012 in cooperation with the City of Abbotsford to help monitor and plan flood response for overflows at Everson during large flood events.

▪ **Funding Amount and Source**

The proposed Joint Funding Agreement is for a total amount of \$120,197, of which \$6,989 will be funded by the USGS through Cooperative Matching Funds. The FCZD fund will provide \$104,921, with \$6,001 from the Acme/VanZandt Subzone fund, and the City of Abbotsford will reimburse \$4,413 in accordance with the existing Interlocal Agreement for the Everson Overflow gaging station.

Similar to last year, another portion (\$8,287) of the total USGS contribution of \$15,276 is through its Federal Priority Streamgage Program, which is not reflected in the Joint Funding Agreement (other than in Attachment A) as the agreement is only for Cooperative Water Program funding.

▪ **Differences from Previous Contract**

This year's costs to the FCZD are \$804 or <1% higher than the cost of similar services provided last year.

Please contact Paula Harris at extension 6285 if you have any questions or concerns regarding the terms of this agreement.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
202109030

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood/907540
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	USGS
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 #: _____	
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? Contract _____	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: 169110 & 169230	
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 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): \$ 104,921	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:
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ 104,921	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.
Summary of Scope:	3. Bid or award is for supplies.
The annual Joint Funding Agreement with the USGS funds the ongoing operation and maintenance of the County's six stream gages within the Nooksack River early flood warning system; a stream gage at the Nooksack River Everson Overflow; and a stream gage on Jones Creek at Acme WA for early flood warning and flood response.	
Term of Contract: October 1, 2021	Expiration Date: September 30, 2022

Contract Routing:	1. Prepared by: LC	Date: 9/21/2021
	2. Attorney signoff: Christopher Quinn	Date: 9/21/2021
	3. AS Finance reviewed: bbenett	Date: 9/27/2021
	4. IT reviewed (if IT related):	Date: _____
	5. Contractor signed:	Date: _____
	6. Submitted to Exec.: _____	Date: 09/30/21
	7. Council approved (if necessary):	Date: _____
	8. Executive signed:	Date: _____
	9. Original to Council:	Date: _____

Last edited 07/06/20

Form 9-1366
(May 2018)

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

Customer #: 6000000721
Agreement #: 22YGJFA04200
Project #: YG00H1U
TIN #: 91-6001383

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the **October 1, 2021**, by the U.S. GEOLOGICAL SURVEY, Washington Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the **Whatcom County Flood Control Zone District**, party of the second part.

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

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

- (a) **\$6,989** by the party of the first part during the period
October 1, 2021 to September 30, 2022
- (b) **\$104,921** by the party of the second part during the period
October 1, 2021 to September 30, 2022
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: **\$8,287**

Description of the USGS regional/national program: USGS Federal Priority Streamgaging Program

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices

website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).

**Form 9-1366
(May 2018)**

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

**Customer #: 6000000721
Agreement #: 22YGJFA04200
Project #: YG00H1U
TIN #: 91-6001383**

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

USGS Technical Point of Contact

Name: Christopher Laveau
Supervisory Hydrologist
Address: 934 Broadway Suite 300
Tacoma, WA 98402
Telephone: (253) 552-1609
Fax: (253) 552-1581
Email: cdlaveau@usgs.gov

Customer Billing Point of Contact

Name: Paula Harris
Manager, River and Flood Division
Address: Whatcom County Public Works
Department 322 N Commercial Street,
Suite 210
Bellingham, WA 98225-4042
Telephone: 360-778-6285
Fax:
Email: pharris@co.whatcom.wa.us

**U.S. Geological Survey
United States
Department of Interior**

Whatcom County Public Works

CYNTHIA
By BARTON
Name: Cynthia Barton, Ph.D, L.H.G., L.G.
Title: Center Director

Signature
Digitally signed by
CYNTHIA BARTON
Date: 2021.09.07
07:40:08 -07'00'

Signatures

By Date: See Attached Name:

Title:

By _____ Date: _____

Name:

Title:

By _____ Date: _____

Name:

Title:

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:

Jon Hutchings, Public Works Director

Date

Approved as to form only:

Christopher Quinn, Date
Senior Deputy Prosecuting Attorney – Civil Division

Approved:

Accepted for Whatcom County Flood Control Zone District

By: _____
Satpal Singh Sidhu, Whatcom County Executive, Date
acting for the Whatcom County
Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

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

NOTARY PUBLIC in and for the State of

Washington, residing at _____.

My commission expires
_____.

USGS Station No.	Station Name	Whatcom County Public Works Dept.	USGS Federal Priority Streamgaging Program	USGS Cooperative Matching Funds	Total	Remarks
NORTHWEST WASHINGTON FIELD OFFICE (FERNDAL), 360-312-8155 x2001						
12205000	North Fork Nooksack River below Cascade Creek near Glacier					
	Streamflow discharge with priority real-time data transmission	\$15,656		\$6,989	\$22,645	
12208000	Middle Fork Nooksack River near Deming					
	Streamflow discharge with priority real-time data transmission	\$3,420			\$3,420	The remainder of this gage is funded by the City of Bellingham.
12210000	South Fork Nooksack River at Saxon Bridge					
	Streamflow discharge with priority real-time data transmission	\$16,520	\$6,125		\$22,645	
12210220	Jones Creek at Acme					
	Stage (unpublished) with real-time data transmission, Oct.-June	\$3,938			\$3,938	
	Precipitation (unpublished), Oct.-June	\$2,063			\$2,063	
12210700	Nooksack River at North Cedarville					
	Streamflow discharge with priority real-time data transmission	\$13,033			\$13,033	The remainder of this gage is funded by the Washington State Dept. of Ecology and USGS.
	Precipitation and air temperature (unpublished)	\$2,750			\$2,750	
12211195	Nooksack River Overflow at Highway 544 at Everson					
	Stage (published) with real-time data transmission (Oct.-Mar.)	\$4,413			\$4,413	
12211200	Nooksack River at Everson					
	Streamflow discharge with priority real-time data transmission	\$22,645			\$22,645	
12213100	Nooksack River at Ferndale					
	Streamflow discharge with priority real-time data transmission	\$20,483	\$2,162		\$22,645	
FY21 TOTAL		\$104,921	\$8,287	\$6,989	\$120,197	



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-581

File ID:	AB2021-581	Version:	1	Status:	Agenda Ready
File Created:	09/29/2021	Entered by:	AKell@co.whatcom.wa.us		
Department:	Council Office	File Type:	Contract (FCZDBS)		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and the State of Washington Department of Health to provide funding to implement the Whatcom County Enhanced Pollution Identification and Correction Program in the amount of \$580,000 for a total amended contract amount of \$1,627,732 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The purpose of this amendment is to 1) correct the legal entity name of the contractor from Whatcom County Public Works to Whatcom County Flood Control Zone District (retroactive to the start date of the original agreement), 2) add \$580,000 in funding, 3) Revise the statement of work exhibit A-1 in accordance with A-2 attached hereto and incorporated herein; 4) extend the end date of the contract to March 31, 2023 to support further Pollution Identification and Correction activities. Special focus will be placed on Portage Bay, Drayton Harbor, and other shellfish growing areas. The additional funding comes with updated federal terms and conditions. Activities include project management, program coordination, landowner contacts, technical and financial assistance, regulatory backstop, and community outreach and engagement

HISTORY OF LEGISLATIVE FILE

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

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings
Director**




NATURAL RESOURCES

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

MEMORANDUM

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

THROUGH: Jon Hutchings, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager 

DATE: September 24, 2021

RE: Amendment to Agreement between Washington State Department of Health and Whatcom County Flood Control Zone District for Enhanced PIC Program

Requested Action

Public Works respectfully requests that the Flood Control Zone District Board of Supervisors authorize the County Executive to sign the amendment to the interagency agreement #GVL24435-2 between the State of Washington Department of Health and Whatcom County Flood Control Zone District to support implementation of the Pollution Identification and Correction (PIC) Program. The authorized contract amendment will be signed electronically through AdobeSign.

Background and Purpose

This grant amendment corrects the legal name of the entity, extends the duration of the contract, and provides additional funds to continue to support implementation of the Whatcom County PIC Program. Tasks include project development; project management and reporting; program coordination; pollution identification and correction; outreach and education; and PIC training and workshops.

Funding Amount and Source

This grant amendment with the Washington State Department of Health provides an additional \$580,000 for a total amended budget of \$1,627,732 to complete tasks as outlined in the scope of work. Please contact Gary Stoyka at extension 6218 or Erika Douglas at 6294 if you have any questions or concerns regarding the terms of this amendment.

Encl.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.
201909008-2

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Natural Resources- PIC Program (950530)
Contract or Grant Administrator:	Erika Douglas
Contractor's / Agency Name:	Washington State Department of Health
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: <u>201909008</u>	
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): <u>GVL24435-2</u> CFDA#: <u>66.123</u>	
Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>813002</u>	
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 work is for less than 120 days. <input checked="" 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 type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>1,047,732</u> This Amendment Amount: \$ <u>580,000</u> Total Amended Amount: \$ <u>1,627,732</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: The purpose of this amendment is to 1) correct the legal entity name of the contractor from Whatcom County Public Works to Whatcom County Flood Control Zone District (retroactive to the start date of the original agreement), 2) add \$580,000 in funding, 3) Revise the Statement of Work Exhibit A-1 in accordance with A-2 attached hereto and incorporated herein; and 4) extend the end date of the contract to March 31, 2023 to support further Pollution Identification and Correction activities. Special focus will be placed on Portage Bay, Drayton Harbor and other shellfish growing areas. The additional funding comes with updated federal terms and conditions.	
Term of Contract:	<u>7/1/19-03/31/23</u>
Expiration Date:	<u>March 31, 2023</u>
Contract Routing:	1. Prepared by: <u>EDouglas</u> Date: <u>9/24/21</u> 2. Attorney signoff: <u>Christopher Quinn</u> Date: <u>9/27/2021</u> 3. AS Finance reviewed: <u>M Caldwell</u> Date: <u>9/28/21</u> 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: _____



CONTRACT NUMBER: AMENDMENT GVL24435-2	SUBRECIPIENT * <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
FFATA FORM REQUIRED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

INTERAGENCY AGREEMENT
Between
STATE OF WASHINGTON
DEPARTMENT OF HEALTH
And
WHATCOM COUNTY
FLOOD CONTROL ZONE DISTRICT

THIS AGREEMENT AMENDMENT is made by and between the State of Washington Department of Health, hereinafter referred to as DOH, and **WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**, whose address is 322 N. Commercial Street, Suite 110, Bellingham, WA 98225, hereinafter referred to as Contractor pursuant to the authority granted by Chapter 39.34 RCW.

PURPOSE: The purpose of this amendment is to 1) correct the legal entity name of the contractor from Whatcom County Public Works to Whatcom County Flood Control Zone District (retroactive to the start date of the original agreement), 2) add \$580,000 in funding, 3) Revise the Statement of Work Exhibit A-1 in accordance with A-2 attached hereto and incorporated herein; and 4) extend the end date of the contract to March 31, 2023 to support further Pollution Identification and Correction activities. Special focus will be placed on Portage Bay, Drayton Harbor and other shellfish growing areas. The additional funding comes with updated federal terms and conditions.

THEREFORE, IT IS MUTUALLY AGREED THAT:

NAME OF CONTRACTOR: is corrected to **Whatcom County Flood Control Zone District** retroactive to the start date of the original agreement.

THE EFFECTIVE DATE OF THIS AMENDMENT: is **July 1, 2019**.

STATEMENT OF WORK AND BUDGET: The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Exhibit A, attached hereto and incorporated herein.

PERIOD OF PERFORMANCE: Subject to its other provisions, the period of performance of this Agreement shall commence on **July 1, 2019** and be completed on **March 31, 2023**, unless terminated sooner as provided herein. Any work done outside of the period of performance shall be provided at no cost to DOH.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA): If checked above, this Agreement is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this Agreement, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data

about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Information about your organization and this Agreement will be made available on www.USASpending.gov by DOH as required by P.L. 109-282. DOH's form, Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this Agreement and must be completed and returned along with the Agreement.

PAYMENT: Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130.

This amendment increases the **Contract Consideration** by **\$580,000.00**; therefore, the revised maximum consideration of this contract and all amendments shall not exceed **\$1,627,732.00** without a properly executed written amendment signed by representatives of both parties authorized to do so. Consideration includes but is not limited to all taxes, fees, surcharges, etc.

Source of Funds:

Federal: **\$580,000.00** State: \$ Other: \$ **TOTAL: \$580,000.00**

Payment will not exceed this amount without a prior written amendment. DOH will authorize payment only upon satisfactory completion and acceptance of deliverables and for allowable costs as outlined in the statement of work and/or budget.

Contractor agrees to comply with applicable rules and regulations associated with these funds.

BILLING PROCEDURE: Payment to the Contractor for approved and completed work will be made by warrant or account transfer by DOH within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted per the Statement of Work, Exhibit A (if applicable) or within 60 days after the contract expiration date, whichever is earlier.

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

ALLOWABLE COST: Shall mean an expenditure which meets the test of the Uniform Guidance (2CFR 200) (see "I. Federal Compliance"). The most significant factors affecting allowability of cost are; 1) they must be necessary and reasonable, 2) they must be allocable, 3) they must be authorized or not prohibited under State or local laws and regulations, and 4) they must be adequately documented. For more specifics see Selected Items of Cost 2 CFR 200.420).

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.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION: The use or disclosure by any party of any information concerning a client obtained in providing service under this Agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as any other applicable Federal and State statutes and regulations.

Any unauthorized access or use of confidential information must be reported to the DOH Chief Information Security Officer at security@doh.wa.gov. The notification must be made in the most expedient time possible (usually within one business day of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

CONTRACT MANAGEMENT: The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this agreement.

The Contract Manager for DOH is:

Name: Megan Schell
Office: EPH/NEP
Agency: Department of Health
Address: PO Box 47824
City, State, Zip: Olympia, WA 98504-7824
Phone: (360)236-3307

The Contract Manager for the Contractor is:

Name: Erika Douglas
Title: Contract Manager
Company: Whatcom County Public Works
Address: 322 N. Commercial, Suite 110
City, State, Zip: Bellingham, WA 98225
Phone: (360) 778-6294

CONTRACT: Shall mean the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the Contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a Contractor are when the non-Federal entity receiving the Federal funds:

- A. Provides the goods and services within normal business operations;
- B. Provides similar goods or services to many different purchasers;
- C. Normally operates in a competitive environment;
- D. Provides goods or services that are ancillary to the operation of the Federal program; and
- E. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

CONTRACTOR: Shall mean that agency, firm, provider, organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this contract.

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

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 shall 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 shall be resolved by giving precedence in the following order:

- A. Federal statutes and regulations
- B. State statutes and regulations
- C. Agreement amendments
- D. The Agreement (in this order)
 - 1. Special Terms and Conditions (Exhibit C if used)

2. Federal compliance and Standard Federal Certifications and Assurances (Attachment I)
3. Primary document (document that includes the signature page)
4. Statement of Work (Exhibit A)

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.

NONCOMPLIANCE: Shall mean if a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- A. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- B. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate the Federal award.
- D. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- E. Withhold further Federal awards for the project or program.
- F. Take other remedies that may be legally available.

PRIVACY: Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

DOH reserves the right to monitor, audit or investigate the use of personal information collected, used or acquired by the Contractor through this Agreement. The monitoring, auditing, or investigating may include but is not limited to "salting" by DOH. Contractor shall certify the return or destruction of all personal information upon expiration of this Agreement. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless DOH for any damages related to the Contractor's unauthorized use of personal information.

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

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

RIGHTS IN DATA: Unless otherwise provided, data, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by DOH. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

RISK ASSESSMENT: Shall mean (2 CFR 200.331(b)) DOH is required to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

- A. The subrecipient's prior experience with the same or similar subawards;
- B. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- C. Whether the subrecipient has new personnel or new or substantially changed systems; and
- D. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

SECURITY OF INFORMATION – Unless otherwise specifically authorized by the DOH Chief Information Security Officer, Contractor receiving confidential information under this contract assures that:

- It is compliant with the applicable provisions of the Washington State Office of the Chief Information Officer (OCIO) policy 141, Securing Information Technology Assets, available at: <https://ocio.wa.gov/policy/securing-information-technology-assets>.
- It will provide DOH copies of its IT security policies, practices and procedures upon the request of the DOH Chief Information Security Officer.
- DOH may at any time conduct an audit of the Contractor's security practices and/or infrastructure to assure compliance with the security requirements of this contract.
- It has implemented physical, electronic and administrative safeguards that are consistent with OCIO security standard 141.10 and ISB IT guidelines to prevent unauthorized access, use, modification or disclosure of DOH Confidential Information in any form. This includes, but is not limited to, restricting access to specifically authorized individuals and services through the use of:
 - Documented access authorization and change control procedures;
 - Card key systems that restrict, monitor and log access;
 - Locked racks for the storage of servers that contain Confidential Information or use AES encryption (key lengths of 256 bits or greater) to protect confidential data at rest, standard algorithms validated by the National Institute of Standards and Technology (NIST) Cryptographic Algorithm Validation Program (CMVP);
 - Documented patch management practices that assure all network systems are running critical security updates within 6 days of release when the exploit is in the wild, and within 30 days of release for all others;
 - Documented anti-virus strategies that assure all systems are running the most current anti-virus signatures within 1 day of release;

- Complex passwords that are systematically enforced and password expiration not to exceed 120 days, dependent user authentication types as defined in OCIO security standards;
- Strong multi-factor authentication mechanisms that assure the identity of individuals who access Confidential Information;
- Account lock-out after 5 failed authentication attempts for a minimum of 15 minutes, or for Confidential Information, until administrator reset;
- AES encryption (using key lengths 128 bits or greater) session for all data transmissions, standard algorithms validated by NIST CMVP;
- Firewall rules and network address translation that isolate database servers from web servers and public networks;
- Regular review of firewall rules and configurations to assure compliance with authorization and change control procedures;
- Log management and intrusion detection/prevention systems;
- A documented and tested incident response plan

Any breach of this clause may result in termination of the contract and the demand for return of all personal information.

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.

SPECIFIC CONDITIONS:

- A. The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with (2 CFR 200.207) paragraphs (b) and (c) of this section, under the following circumstances:
 - 1. Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants;
 - 2. When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
 - 3. When an applicant or recipient fails to meet expected performance goals as described in §200.210 Information contained in a Federal award; or
 - 4. When an applicant or recipient is not otherwise responsible.
- B. These additional Federal award conditions may include items such as the following:
 - 1. Requiring payments as reimbursements rather than advance payments;
 - 2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - 3. Requiring additional, more detailed financial reports;
 - 4. Requiring additional project monitoring;
 - 5. Requiring the non-Federal entity to obtain technical or management assistance; or
 - 6. Establishing additional prior approvals.
- C. The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:
 - 1. The nature of the additional requirements;
 - 2. The reason why the additional requirements are being imposed;
 - 3. The nature of the action needed to remove the additional requirement, if applicable;
 - 4. The time allowed for completing the actions if applicable, and

5. The method for requesting reconsideration of the additional requirements imposed.
- D. Any specific conditions must be promptly removed once the conditions that prompted them have been corrected

SUBCONTRACTING: Neither the Contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this agreement without prior written approval of DOH. In no event shall the existence of the sub operate to release or reduce the liability of the Contractor to DOH for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this Agreement.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DOH or as provided by law.

If, at any time during the progress of the work, DOH determines in its sole judgment that any subcontractor is incompetent, DOH shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by DOH of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Agreement, nor be the basis for additional charges to DOH.

SUBRECIPIENT: Shall mean a non-Federal entity that received a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. (2 CFR 200.93)

Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- A. Determines who is eligible to receive what Federal assistance;
- B. Has its performance measured in relation to whether objectives of a Federal program were met;
- C. Has responsibility for programmatic decision making;
- D. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- E. In accordance with its contract, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of a pass-through entity.

SUSPENSION OF PERFORMANCE AND RESUMPTION OF PERFORMANCE: In the event contract funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, DOH may give notice to Contractor to suspend performance as an alternative to termination. DOH may elect to give written notice to Contractor to suspend performance when DOH determines that there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this Agreement. Notice may include notice by facsimile or email to Contractor's representative. Contractor shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When DOH determines that the funding insufficiency is resolved, DOH may give Contractor written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, Contractor will give written notice to DOH as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Contractor gives notice to DOH that it

cannot resume performance, the parties agree that the Agreement will be terminated retroactive to the original date of termination. If the date Contractor gives notice it can resume performance is not acceptable to DOH, the parties agree to discuss an alternative acceptable date. If an alternative date is not acceptable to DOH, the parties agree that the Agreement will be terminated retroactive to the original date of termination.

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement.

CONTRACTOR SIGNATURE	DATE
PRINT OR TYPE NAME	TITLE
DOH CONTRACTING OFFICER SIGNATURE	DATE

This document has been approved as to form only by the Assistant Attorney General.

NOTE: The Contractor's signature is also required on Attachment 1, Federal Certifications and Assurances.

STATEMENT OF WORK
Shellfish Strategic Initiative
Whatcom County Flood Control Zone District
Enhanced Pollution Identification and Correction Program

Contract number: GVL24435-2

Subrecipient Organization: Whatcom County

Subrecipient Contact: Erika Douglas EDouglas@co.whatcom.wa.us 360.778.6294

DUNS #: 06-004-4641

CPAR Info (Statewide Vendor #, UBI, Federal Tax ID, etc.): SWV00024552; 600358208; 91-6001383

DOH Contract Manager: Megan Schell megan.schell@doh.wa.gov 360.236.3307

Federally Approved Indirect Rate: N/A

Period of Performance: July 1, 2019 – March 31, 2023

Brief Project Description: The purpose of this agreement is to expand the successful Whatcom County Pollution Identification and Correction (PIC) program to cover additional drainage areas with commercial, tribal, or recreational shellfish closures or declining water quality. In addition, Whatcom County will continue the PIC program in areas where water quality improvement is still needed, with a particular emphasis on the Nooksack/Portage Bay watershed, including transboundary efforts.

Not to exceed: \$1,627,732

Near Term Action ID: 2018-0171

OVERVIEW

This project comprises Whatcom County's component of the Whatcom Clean Water Program (WCWP). The WCWP is a partnership of local, state, and federal agencies and tribes working together to reduce bacteria pollution affecting shellfish growing areas in Whatcom County. Through the expansion of the successful Whatcom County Pollution Identification and Correction (PIC) program, Whatcom County will cover additional drainage areas with commercial, tribal, or recreational shellfish closures or declining water quality. In addition, Whatcom County will continue PIC program work in areas needing water quality improvement, with a particular emphasis on the Nooksack/Portage Bay watershed, including transboundary efforts. Program goals include:

- Increase the number of months approved for shellfish harvest in Portage Bay;
- Upgrade additional recreational shellfish areas in Drayton Harbor and Northern Chuckanut Bay;
- Meet water quality benchmarks for fecal coliform in coastal creeks and tributaries;
- Maintain open shellfish growing areas in Lummi Bay and the recently upgraded areas/seasons in Drayton Harbor, Birch Bay, and Portage Bay.
- Improve water quality trends in Lummi Bay.

**STATEMENT OF WORK
DOH CONTRACT AMENDMENT GVL24435-2**

EXHIBIT A-2

GOALS & MEASURABLE OBJECTIVES

This simply summarizes key metrics and measures called out in the tasks below. This table is a component of the FEATS report.

Description (e.g., "shellfish beds reopened")	Units (e.g., "acres")	Targets (“number”)
Increase number of months Portage Bay is approved for shellfish harvest	Months	12 (currently 9)
Increase and maintain number of acres approved for shellfish harvest in Drayton Harbor	Acres	930 (as of October 22, 2019, there are 1,575 acres open)
Increase access to safe recreational shellfish harvest in Whatcom County	Beach	2
Maintain approved shellfish growing areas in Lummi Bay, Drayton Harbor, Birch Bay, and Portage Bay.	Acres	8,109 (as of October 22, 2019, there are 8,874 acres)
Increase percent of routine monitoring stations meeting annual water quality targets	Stations	70% (59% in 2018)
Contact landowners with PIC program messaging to build community awareness and knowledge	Landowners	2,400
Complete farm plans to guide improved management practices	Farm Plans	220
Provide incentives for septic maintenance and small farm improvements	Rebates	360
Provide stewardship incentives/reminders through outreach programs	Incentives	1,400
Distribute annual PIC newsletters to share progress and available assistance programs	Newsletters	7,500
Participate in community events (in person or virtual) to provide information about water quality patterns and PIC resources	Community Events	15

**STATEMENT OF WORK
DOH CONTRACT AMENDMENT GVL24435-2**

TASKS & DELIVERABLES

The following are the tasks, deliverables, and deadlines associated with this subaward:

►► TASK 1. Project Development

This task must be completed before initiating any other work under this subaward. Work completed prior to the completion of Task 1 will be ineligible for reimbursement under this subaward.

1.1 PROJECT SPATIAL DATA COORDINATES

Provide relevant spatial data for their project in the following format: (latitude, longitude). Please use a representative sample site in the project area as applicable or the coordinates of a subrecipient's office may also be used when a specific project site is not available.

PROJECT LOCATION:

18a. Latitude	48.7548	18b. Longitude	-122.4777
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1.2 QUALITY ASSURANCE PROJECT PLAN (QAPP) DEVELOPMENT

Sub-recipient will submit a Quality Assurance Project Plan Waiver form after reviewing the Washington State Department of Ecology's NEP Quality Assurance web page: <https://ecology.wa.gov/About-us/How-we-operate/Scientific-services/Quality-assurance/Quality-assurance-for-NEP-grantees>. If a QAPP is required, sub-recipients will work with Ecology's NEP Quality Coordinator -NEP QC to develop and approve the QAPP.

Work related to collecting or using environmental data may not begin until the QAPP waiver and QAPP are completed and approved. **QAPP determination must be reassessed for each contract amendment.**

1.3 EVALUATION PLAN (DOH TEMPLATE):

Complete short one-page planning document describing your program's plans for evaluation including data collection methods. Following project, used to discuss what the outcome results tell you about the impact and success of your program activities.

1.4 EFFECTIVENESS CONSULTATION:

When you are approximately 2/3rd of the way through your project, the sub-recipient will contact and consult via telephone (30 minutes) with the Puget Sound Partnership (PSP) effectiveness team regarding project metrics being tracked. PSP effectiveness team will provide an analysis approach for the NTA, about a paragraph per project, and will provide results of the effectiveness analysis to the Shellfish Strategic Initiative Advisory Team. The Shellfish SI grant program representative will send an email to put the sub-recipient in contact with the PSP effectiveness team. Email Elene Trujillo, elene.trujillo@psp.wa.gov in the PSP Effectiveness team to schedule the phone consult.

Number	Deliverable	Reimbursement	Completion date
1.1	Project Spatial Data	Reimbursement up to	July 15, 2019
1.2	QAPP	\$2,000 based on actual costs	Draft due within 30 days of agreement and amendment(s) start date

**STATEMENT OF WORK
DOH CONTRACT AMENDMENT GVL24435-2**

1.3	a.1) Evaluation Plan		a.1) Draft within 60 days of agreement start date
	a.2) Revised Evaluation Plan		a.2) Due within 60 days of amendment start date
	b) Evaluation Report		b) Final Evaluation Report due at contract completion
1.4	Effectiveness consultation		2/3 rd of way through project

►► TASK 2. Project Management and Reporting

This task describes the data collection and reporting requirements associated with this subaward. Maintenance of project records, submittal of payment vouchers, fiscal forms, and progress reports; compliance with applicable procurement, contracting and inter-local agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project and submittal of required performance items. Carry out project in accordance with any completion dates outlined in the agreement.

Refer to and comply with all underlying federal terms and conditions.

2.0 INTERLOCAL AGREEMENTS

Complete interlocal agreement with Whatcom Conservation District (WCD). Complete amendment to interlocal agreement with the WCD for each amendment, as appropriate.

2.1 PROJECT FACTSHEET

Create a project factsheet ([using provided template](#)) and submit in MS Word and PDF with first quarterly report.

2.2 QUARTERLY INVOICING AND PROGRESS REPORTS (DOH TEMPLATE)

The sub-recipient will email quarterly progress reports, deliverables and invoices with all applicable forms included with the A19-1A, to NEPinvoices@doh.wa.gov with the contract manager cc'd. Invoices must be submitted at least quarterly and but no more frequently than monthly. Invoices will be reviewed for consistency with progress. Local or County Health subrecipients will submit invoices through the Con-Con process, and will send progress reports and deliverables to the Contract Manager.

The reporting periods are synced to inform the grant program's EPA reporting schedule; therefore, it is critical that the subrecipient submit according to the following schedule. Progress reports shall include, at a minimum:

- A description of the work completed in the last quarter, including total spending by the subrecipient and any partners and any completed deliverables.
- The status and completion date for the project activities and near-term deliverables.
- Description of any problem or circumstances affecting the completion date, scope of work, or costs.
- Evidence that you have satisfactorily completed all the reporting requirements (see below).

First Quarter Period: January 1 – March 31

summary

FEATS will serve as project

Second Quarter Period: April 1 – June 30

Summary due by July 15

Third Quarter Period:	July 1 – September 30	FEATS will serve as project summary
Fourth Quarter Period:	October 1 – December 31	Summary due by January 15

Reporting requirements:

2.3 FEATS (TEMPLATE WILL BE PROVIDED)

Complete bi-annual FEATS (*Financial and Ecosystem Accounting Tracking System*) progress reports, as well as a final FEATS report. The final FEATS report, reflecting the final project billing, will be provided during project closeout, after the end of the grant, and will describe the entire project, highlighting project outcomes and discussing lessons learned.

FEATs Reporting must be completed by: April 10
October 10

Final FEATs report completed by: _____ Upon contract completion

2.4 PUGET SOUND PARTNERSHIP REQUIRED NTA REPORTING

NTA owners are required to report on the following:

- Implementation status of their actions on a semiannual basis
- Financial status of their actions on an annual basis

NTA reporting completed between: Annually, spring and fall

NTA financial reporting completed between: Annually, summer

2.5 WATER QUALITY EXCHANGE (WQX) DATA REPORTING

WQX refers to an electronic data system for water quality monitoring data developed by EPA. If sub-recipients collect any physical, chemical or environmental data (e.g. dissolved oxygen, water temperature, salinity, turbidity, pH, phosphorous, total nitrogen, E. coli or Enterococci, and other biological and habitat data) WQX reporting will be required.

Data for an entire calendar year (Jan. 1 – Dec. 31) should be submitted annually. To assist in tracking in WQX, name your project as follows: NEP_2018_(insert organization name); the unique project ID needs to be 35 characters or less. Include the WQX ID in the quarterly progress reports. [Here](#) is an entry verification sample for reference.

WQX reporting completed by: See FEATS schedule, Task 1.2.1

Final WOX entry completed by: _____ Upon contract completion

2.6 WOMEN/MINORITY-OWNED BUSINESS (MBE/WBE) REPORTS

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described in the underlying Terms and Conditions based upon the associated class deviation.

**STATEMENT OF WORK
DOH CONTRACT AMENDMENT GVL24435-2**

Subrecipients are required to submit MBE/WBE utilization reports annually. Reports will be in the following format and will include all qualifying purchases. Reporting periods are from October 1 to September 30 annually. Reports are due to DOH 15 calendar days after the end of each reporting period.

1. Procurement Made By: (check box)			2. Business Enterprise: (check box)		3. \$ Value of Procurement:	4. Date of Purchase MM/DD/YY	5. Type of Product or Services * (Enter Code)	6. Name/Address/Phone MBE/WBE Contractor or Vendor
Recipient	Subrecipient	Prime	Minority	Women				

*Type of product or service codes: 1 = Construction 2 = Supplies 3 = Services 4 = Equipment

2.7 BROADER COMMUNICATIONS (PRESENT AT REGIONAL CONFERENCE AND SUBMIT PROJECT PHOTOS)

Participate in and present project outcomes at a regional event relevant to the project topic (conference, forum, stakeholder workshop, etc.). Work with DOH to determine targeted audience and ensure purpose of communication is clear. Submit draft materials to DOH for review prior to event. In addition, submit high-quality project photos or video clips of the project (process, progress, etc.). Ensure anyone in the photo or video has signed a release in case photos or videos are used for future publications. NOTE: INTERNATIONAL TRAVEL REQUIRES PRE-APPROVAL.

2.8 FINAL PROJECT REPORT (DOH TEMPLATE)

A brief final report (approximately 1-2 page(s)) will be written by the project owners that describes the methods, results, lessons learned and recommendations for future work. The final report will evaluate the success of achieving the performance measures identified in the detailed project plan. Included with the final project report will be an updated Project Factsheet (see 2.1).

Number	Deliverable	Reimbursement	Completion date
2.0	Complete interlocal agreement with Whatcom Conservation District (WCD).	Reimbursement up to \$2,000 based on actual costs	Within 60 days of this award's execution
	Complete amendment to the interlocal agreement with WCD		Within 60 days of amendment(s) execution, as needed
2.1	Project Fact Sheet		July 15, 2019
	Updated Project Fact Sheet (if needed)		July 15, 2021
2.2	Quarterly invoice and Project Summaries		July and January 15, annually
2.3	Semi-annual FEATS reports		April and October 15, annually
2.4	PSP Required NTA Reporting a) Implementation Status		

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	b) Financial Status		a) Annually, spring and fall and upon contract completion
			b) Annually, summer
2.5	WQX data entry		Per FEATS schedule 1.2.1
2.6	MBE/WBE Reporting		October 15, annually, and upon contract completion
2.7	a) Broader Communications: Present at a regional conference. Submit draft presentation materials to DOH for review b) Submit photos		a) As available b) Ongoing and upon contract completion
2.8	a) Draft Final Project Report b) Final Project Report and Updated Fact Sheet		a) Draft due 30 days prior to contract end date; b) Upon contract completion

►► TASK 3. Whatcom County Pollution Identification and Correction (PIC) Program

This project comprises Whatcom County's component of the Whatcom Clean Water Program (WCWP). The WCWP is a partnership of local, state, and federal agencies and tribes working together to reduce bacteria pollution affecting shellfish growing areas in Whatcom County. The goals of this program are to increase the number of months approved for shellfish harvest in Portage Bay; upgrade additional shellfish beds in Drayton Harbor and Northern Chuckanut Bay; meet water quality targets for fecal coliform in coastal creeks and tributaries; and maintain "Approved" status of shellfish growing areas in Lummi Bay and recently upgraded shellfish beds in Drayton Harbor, Birch Bay, and Portage Bay.

3.1 PIC PROGRAM COORDINATION: Whatcom PIC field staff meetings with Whatcom Clean Water Program (WCWP) project partners will be held bi-weekly to monthly, PIC Managers meetings will be held monthly, and WCWP Core Group meetings will be held quarterly or as needed to advance collaborative work in the PIC project areas. Partners will report on their work and coordinate water quality monitoring, landowner contacts, and community outreach messaging. County and Whatcom Conservation District (WCD) staff will coordinate with community groups within the project area and with Canadian partners in transboundary watersheds. A data coordinator will be housed at the WCD to manage the WCWP water quality database and online map of preliminary water quality data and provide other data support to WCWP partners, transboundary efforts, and community groups in the PIC areas.

3.2 POLLUTION IDENTIFICATION AND CORRECTION: Public Works and WCD staff will contact landowners in PIC areas, with a particular emphasis on fecal bacteria hot spots, to provide water quality information, offer technical and

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financial assistance programs to eliminate or mitigate fecal bacteria sources. Landowners with noted violations or discharges that do not respond to PIC outreach efforts will be referred to regulatory agencies to pursue compliance. All pollution identification data paid for by the grant will be shared with state or federal agencies upon request.

3.2.a Prioritize area or bacteria hot spots within the PIC areas. Characterize boundaries, drainage patterns, land uses, bacteria levels, seasonal patterns, and potential sources in priority drainages. Contact landowners in priority areas or hot spots to provide information about water quality patterns and provide technical assistance resources for potential bacteria sources. Contact landowners with non-dairy agricultural operations to offer technical assistance and financial incentives.

3.2.b Provide technical assistance for non-dairy agriculture. WCD will provide technical assistance for non-dairy agricultural operations through site assessments, development of farm plans, and on-going support to landowners implementing Best Management Practices (BMPS).

3.2.c Rebates and incentives for water quality stewardship. Provide septic maintenance rebates and small farm rebates to eligible landowners/operators with septic or agricultural operations in Whatcom County watersheds that discharge to marine waters. To be eligible for a septic rebate, a landowner/operator must attend a County Health septic workshop or complete the online training and associated quiz. To be eligible for a small farm rebate, a landowner/operator must attend a WCD farm workshop, complete a WCD online training, or have WCD staff visit the farm site. Provide stewardship incentives at community events, workshops, presentations, through a pledge program, and in the field (e.g. dog walking kits, magnets/stickers/signs for dog waste campaign, sewage sludge gages, magnets with septic maintenance reminders, wildlife magnets/stickers, soil tests, manure storage tarps, etc.).

3.2.d Compliance. Whatcom County Planning and Development Services (PDS) staff will implement a tiered compliance strategy that includes education, permitting if required, farm plan monitoring, response to complaints or agency referrals, technical assistance referrals for landowners, outreach through community events and newsletters, and enforcement.

3.2.e Transboundary Work. Whatcom County and WCD PIC staff will participate in transboundary technical work groups for data coordination and community outreach and engagement. In addition, PIC staff will work with Canadian colleagues via email, phone, and conference calls to coordinate monitoring dates, share data and follow up activities in response to elevated bacteria results, and share community outreach messaging and materials. A maximum of four technical work groups per year will require travel to lower British Columbia, Canada. All International Travel must be approved by the Office of International and Tribal Affairs (OITA) **BEFORE** travel occurs.

Monitoring, enforcement, and compliance related activities are **not allowable** north of the border using grant funds.

3.2.f. Low- and Fixed-Income Assistance Program. Develop and implement additional technical and financial assistance programs for low- and fixed-income landowners with septic systems to ensure systems can be evaluated and/or repaired. WCPW will research financial assistance programs provided through the Opportunity Council and other organizations. A proposal to adapt the rebate program or create a new program will be presented to DOH for approval prior to distribution of financial assistance to landowners.

3.2.g. Storm event time-series monitoring. Whatcom County and WCD PIC staff will develop and implement a storm event time series monitoring project in the Nooksack watershed to fill data gaps related to time of travel and patterns of bacteria spikes in the mainstem and priority subwatersheds. Storm events will be characterized for different seasons. WCD PIC staff will develop a QAPP (Task 1), collect samples, enter and analyze data into WQX, and complete a project report. This information will help characterize bacteria patterns during seasonal storms,

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identify potential hot spots contributing to bacteria spikes in the river, and define priority environmental conditions during which source identification and correction efforts are most important to reduce bacteria spikes in marine waters.

3.3 OUTREACH AND EDUCATION: Whatcom County will update the 2019-2021 Whatcom PIC two-year education and outreach strategy with long-term outreach tasks and new focused social marketing campaigns for the 2021-2023 period and begin implementing tasks. The strategy will emphasize actions needed in the fall to reduce bacteria spikes in first flush events. Staff will evaluate observations from previous fall strategies to identify and improve key actions and messages for prioritized audiences. Materials and messaging created through the focused social marketing campaigns will be incorporated into long-term outreach tasks. Whatcom County will review the outreach strategy on an annual basis and will adapt the strategy based upon feedback to outreach efforts and responses identified through evaluation tools.

Per EPA Programmatic Term and Condition #5 in this award, reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J18001 to the Washington State Department of Health. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

3.3.1 Long-term outreach for water quality stewardship: Public Works staff will be dedicated to developing and implementing the PIC outreach strategy including coordination of WCWP outreach meetings, maintaining the water quality and PIC program webpages, developing and distributing outreach materials, coordinating social media posts, participating in community events, and developing/distributing PIC program advertising (e.g. newspapers, radio ads, bus ads, etc.). Translation services will be contracted for septic workshops and select outreach materials. Translation services (through headphones) will be provided at septic workshops and rebate materials will be translated into at least two languages to support community diversity needs. At least one PIC presentation will be provided to decision-makers and community members per year.

Draft outreach materials will be provided to DOH for a minimum two-week review period. Materials will be batched when possible and sent to DOH for review as early as possible.

3.3.2 Focused stewardship campaign: Develop and implement two outreach campaigns to address specific bacteria sources using social marketing techniques to encourage long-term behavior changes. Campaigns will include pre-and post-project evaluations, development of messages that resonate with focus audiences, and outreach materials/graphics/advertisements that engage community members in behaviors that reduce bacteria pollution from specific source or activities. A dog waste pledge program and neighborhood ambassador program will be developed, adapted, and implemented to provide community engagement without direct contact (in response to COVID restrictions). WCPW will partner with the City of Ferndale to implement the dog waste campaign in priority urban drainages in the Nooksack and Lummi Bay watersheds. The second campaign will focus on a specific need identified through review/evaluation of the 2020 fall strategy.

Draft outreach materials will be provided to DOH for a minimum one-week review. Materials will be batched when possible and sent to DOH for review as early as possible.

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3.3.3 Farm series workshops and advertising for farm planning: WCD will develop and host farm workshops and online learning experiences focusing on specific topics, geographic areas, or type of farm animals. These workshops (in person and virtual) will be developed and advertised using social marketing techniques to provide messages that resonate with values identified by landowners in previous focus groups and surveys as well as to address identified barriers. The workshops will provide technical assistance to landowners with farm animals to improve and protect water quality. Completion of a WCD farm workshop or site visit will provide landowners/operators with eligibility for small farm improvement rebates. To accommodate COVID restrictions, standard and online advertising (radio, newspaper, Facebook, Google, YouTube, etc.) will be used to engage more landowners in the farm planning services. In previous years, in-person workshops have been a key avenue for making landowner connections. We are now relying more on one-on-one site visits or virtual meetings to review site specific conditions.

3.3.4 OSS online training. Whatcom County Public Works and Health will enter a contract to develop and implement a comprehensive online training module for landowners with on-site sewage systems. The completion of the online training will certify landowners to complete routine evaluations (some systems are not eligible for landowner evaluation) and provide eligibility for the septic rebate program. The training module will include a quiz that participants must complete with a minimum score to be eligible to complete a homeowner OSS evaluation or receive a septic rebate. The goal is to provide the online training in at least two languages.

Draft outreach materials will be provided to DOH for a minimum two-week review. Materials will be batched when possible and sent to DOH for review as early as possible.

3.4 PIC TRAINING AND WORKSHOPS: Sponsor one North Sound Regional PIC workshop and/or other trainings/events to share information and resources around the region. This may be done in coordination with other PIC Program Coordinators. PIC staff will attend relevant PIC trainings/workshops. Virtual workshops will be considered in response to COVID restrictions.

Number	Deliverable	Reimbursement	Completion date
3.1	PIC PROGRAM COORDINATION Quarterly reports will provide a summary of program coordination activities and progress: <ul style="list-style-type: none"> • Hold monthly PIC Managers meetings • Attend bi-weekly to monthly Whatcom Clean Water Program (WCWP) project partners meetings • Attend WCWP Core Group meetings held quarterly or as needed • Manage data: WCWP water quality database, online map of preliminary water quality results, and provide data support for WCWP partners, transboundary efforts, and community groups. 	Reimbursement up to \$325,621 based on actual costs	Per Task 2.2 - 2.3 schedule

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3.2	<p>POLLUTION IDENTIFICATION AND CORRECTION</p> <p>a.1) Non-dairy/non-CAFO agriculture-related PIC program flowchart*</p> <p>*Prioritized by area or bacteria hot spots within the PIC program areas. Characterizing boundaries, drainage patterns, land uses, bacteria levels, and potential sources in priority drainages.</p> <p>a.2) Number of landowners contacted(target 500/year)</p> <p>b) Number of non-dairy agricultural landowners receiving technical assistance (new and continuing):</p> <ul style="list-style-type: none"> • landowners receiving technical assistance and/or site assessments(target 100/year; 60/year farm plans completed • completed farm plans, and • BMPs by type, planned and implemented <p>c) Provide Rebates and Incentives</p> <ul style="list-style-type: none"> • septic rebates (target 310), • small farm rebates (target 50), • stewardship incentives, e.g. dog walking, magnets, stickers, soil tests, tarps, septic sludge gages, etc. (Target 1,400) • low/fixed income septic asst pilot program rebates (target 50-100) <p>d) Report on:</p> <ul style="list-style-type: none"> • farm plans monitored, 	<p>Reimbursement up to</p> <p align="center">\$859,486</p> <p>based on actual costs</p>	<p>a.1) Updated as necessary to reflect program adaptations (final flow chart will be submitted with final report)</p> <p>a.2-d) Quarterly progress reports will summarize and quantify where appropriate the progress related to Deliverables listed in "b" through "d"</p>
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	<ul style="list-style-type: none"> • letters sent (outreach and technical assistance), • compliance actions (NOVs, penalties), • status of referrals, and status of compliance outreach.(Target 90% compliance referrals and ERTS resolved) <p>e) Pre-approval request for international travel (up to 4 trips/year).</p> <p>Copies of transboundary meeting agendas and notes.</p> <p>f) Low- and fixed-income septic rebate program proposal with eligibility criteria and materials, if needed/appropriate</p> <p>g) Report for time series monitoring project.</p>		<p>e) At least 30 days BEFORE first international travel date.</p> <p>Ongoing</p> <p>f) As needed</p> <p>g) Spring 2022</p>
3.3.1	<p>EDUCATION AND OUTREACH:</p> <p>a) Two-year education and outreach plan and implementation methodology.</p> <p>Outreach plan amendment for 2021, 2022.</p> <p>Include summary of implemented outreach tasks in quarterly progress reports.</p> <p>b) Conduct at least four (4) presentations to local groups and organizations, and participate in at least fifteen (15) community events (possibly online or remotely).</p> <p>c) Develop and implement educational and marketing tools. These will include newsletters, social media posts, and ads (newspaper, radio, bus, etc.).</p>	<p>Reimbursement up to</p> <p style="text-align: right;">\$437,125</p> <p>based on actual costs</p>	<p>a) September 1, 2019</p> <p>November 1, 2020, November 1, 2021</p> <p>Per Task 2 Schedule</p> <p>b) 50% by October 1, 2021</p> <p>All presentations and events completed: March 1, 2023</p> <p>c) Draft provided to DOH for a two-week review</p> <p>Final materials due as completed and at least quarterly.</p>

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	d) Hire education (OSS database/training) contractor		e) July 2021
3.3.2	<p>Develop and implement two focused social marketing campaigns for targeted fecal bacteria sources. This will include:</p> <p>a) Pre-evaluation</p> <p>b.1) Develop and implement focused educational and marketing tools (message graphics). These will include newsletters, social media posts, and ads (newspaper, radio, bus, etc.). A dog waste pledge program and neighborhood ambassador program will be developed, adapted, and implemented to support community engagement in the first campaign.</p> <p>c.2) The second campaign will focus on a specific need identified through review/evaluation of the 2020 fall strategy.</p> <p>c) Contact 1,000 community members annually</p> <p>d) Outreach campaign final evaluation reports with success and challenges.</p>		<p>a) March 1, 2020; April 30, 2021</p> <p>b) April 30, 2020; June 30, 2021</p> <p>Drafts provided to DOH for a two-week review.</p> <p>Final materials due as completed</p> <p>c) February 28, 2022</p> <p>d) March 31, 2022</p>
3.3.3	a) Host ten (10) farm series workshops (in person and virtual).		a) 50% by October 1, 2020

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	b) Workshop advertisements c) Farm planning advertisements		All workshops completed: March 1, 2022 b) Draft provided to DOH for a one-week review c) Draft provided to DOH for a two-week review Final materials due as completed
3.3.4	a) Develop and launch online OSS training module and database. Physical/screen shots of live database and hardcopies of training module. b) Report # of landowners that complete the online training		a) March 31, 2022 b) Per Task 2 Schedule
3.4	PIC TRAINING AND WORKSHOPS a) Coordinate one North Sound PIC Workshop or other training. b) Attend PIC relevant trainings/workshops.	Reimbursement up to \$1,500 based on actual costs	Quarterly progress reports will provide a summary of PIC workshops and staff training.

Budget

Category	Amount
Personnel/Salaries	\$349,574
Fringe Benefits	\$258,676
Travel	\$2,000
Equipment (federal definition – anything over \$5,000)	\$0
Supplies (display materials, signs, community incentives)	\$9,000
Contracts (name, amount, purpose for each; excludes subawards - see below)	\$53,000
<ul style="list-style-type: none"> • Translation services (\$5,000) • OSS Online Training (\$40,000) • Fall Strategy Campaign (\$8,000) 	
Other	\$955,482
<ul style="list-style-type: none"> • Subawards (\$828,182) <ul style="list-style-type: none"> ◦ Whatcom Conservation District (Technical Assistance for Non-Dairy Agriculture, Data Coordination, Time-Series Monitoring Project, Farm Series Workshops, Advertising, Photo/Video Supplies, Staff Training) • Staff training (\$1,500) • Rebates (\$71,800) • Low/Fixed Income Assistance (\$20,500) • Printing and mailing (\$17,000) • Advertising (\$15,000) • Outreach Subscriptions- Survey Monkey, Adobe Suite, Photos, etc. (\$1,500) 	
Total Direct Charges	\$1,627,732
Indirect Charges (federally approved rate %)	\$0
TOTAL – Not to Exceed	\$1,627,732

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Administrative Conditions

A. General Terms and Conditions

The General Terms and Conditions of this agreement are updated in accordance with the link below. However, these updated conditions apply solely to the funds added with this amendment and any previously awarded funds not yet disbursed by the sub-recipient as of the award date of this amendment. The General Terms and Conditions cited in the original award or prior funded amendments remain in effect for funds disbursed by the sub-recipient prior to the award date of this amendment.

The sub-recipient agrees to comply with the current EPA general terms and conditions available at:

https://www.epa.gov/sites/production/files/2019-09/documents/fy_2020_epa_general_terms_and_conditions_effective_october_1_2019.pdf

These terms and conditions are binding for disbursements and are in addition to or modify the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at:

<https://www.epa.gov/grants/grant-terms-and-conditions>.

B. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds the sub-recipient must submit a written request to the DOH Contract Manager prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the sub-recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

C. Disadvantaged Business Enterprise (DBEs)

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The sub-recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described below based upon the associated class deviation.

EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

A class exception to the following provisions of Subpart B of 40 CFR Part 33 has been issued suspending the EPA MBE/WBE certification program: §33.204(a)(3) providing that an entity may apply to EPA MBE or WBE certification after unsuccessfully attempting to obtain certification as otherwise described in §33.204; and §33.205 through and including §33.211. The class exception was authorized pursuant to the authority in 2 CFR 1500.3(b).

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the sub-recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable

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through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The sub-recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302 (a)-(d) and (i).

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Sub-recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Sub-recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A class exception to the entire Subpart D of 40 CFR Part 33 has been authorized pursuant to the authority in 2 CFR 1500.3(b). Notwithstanding Subpart D of 40 CFR Part 33, sub-recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

MBE/WBE REPORTING- SPECIFIC CHANGES PURSUANT TO CLASS DEVIATION, 40 CFR, Part 33, Subpart E

When required, the sub-recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at <https://www.epa.gov/grants/epa-grantee-forms>.

Annual reports are due by October 1st of each year. Final reports are due by October 15th or 90 days after the end of the project period, whichever comes first.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40

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CFR, Part 33, Section 33.502.

D. Contingent Funding

EPA is funding this agreement incrementally. There is no guarantee of funding beyond the first year. The **Total Approved Assistance Amount** identified on Line 12 of the budget table of this award is contingent upon the availability of appropriated funds, EPA funding priorities, and satisfactory progress in carrying out the activities described in the scope of work. If EPA informs the recipient that the amount on Line 12 will be reduced, the recipient agrees to provide an updated workplan.

E. Indirect Costs for States and Tribal (also listed in General Terms and Conditions)

The cost principles of 2 CFR 200 Subpart E are applicable, as appropriate, to this award.

In addition to the General Terms and Conditions "Indirect Cost Rate Agreements", if the sub-recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

For State Agencies

The sub-recipient must send its proposal to its cognizant federal agency within six (6) months after the close of the governmental unit's fiscal year. If EPA is the cognizant federal agency, the state sub-recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

Regular Mail

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC
3802R Washington, DC 20460

Mail Courier (e.g. FedEx, UPS, etc.)

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
US Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th
floor Bid and Proposal Room Number
61107 Washington, DC 20004

For Indian Tribe

If the sub-recipient does not have a previously established indirect cost rate, the sub-recipient must submit their indirect cost rate proposals to:

National Business Center Indirect Cost Services
U.S. Department of the Interior 2180 Harvard Street,
Suite 430 Sacramento, CA 95815-3317

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The sub-recipient agrees to comply with the audit requirements in accordance with 2 CFR 200 Subpart F.

F. Consultant Cap (also listed in General Terms and Conditions)

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by sub-recipients or by a sub-recipient's contractors or subcontractors is limited to the maximum daily rate for a Level IV of the Executive Schedule, available at:

<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>

This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the sub-recipient will pay these in accordance with their normal travel reimbursement practices). The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

Programmatic Conditions

Program Programmatic Terms and Conditions: 3/2020

A. Semi-Annual Performance Reports

The sub-recipient shall submit performance reports for EPA's Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) every six (6) months during the life of the project. Reports are due the first calendar days after the end of each reporting period. The reporting periods shall end March 31st and September 30th of each calendar year. Reports shall be submitted to the DOH Contract Manager electronically on the FEATS form provided by the Contract Manager.

In accordance with 2 CFR 200.328, as appropriate, the sub-recipient agrees to submit performance reports that include brief information on each of the following areas:

1. a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
2. the reasons why established goals were not met, if appropriate;
3. additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the sub-recipient shall immediately notify the DOH Contract Manager of developments that have a significant impact on the award-supported activities. As appropriate, the sub-recipient agrees to inform the DOH Contract Manager as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

B. Final Performance Report

The sub-recipient shall submit a final performance report through FEATS, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the DOH Contract Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the DOH Contract Manager may waive the requirement for a final performance report if the DOH Contract Manager deems such a report is inappropriate or unnecessary.

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C. Program Income – Addition

If program income is generated, the sub-recipient is required to account for program income related to this project. Program income earned during the project period shall be retained by the sub-recipient and shall be added to funds committed to the project by EPA and the sub-recipient, and shall be used to further eligible project objectives.

D. Recognition of EPA Funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J18001-6 to the Washington State Department of Health. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

E. Peer Review

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

F. Competency of Organizations Generating and/or Using Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, sub-recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the DOH Contract Manager for this award.

Federal Assistance Agreement Funds Exceed or Expect to Exceed \$200,000

Sub-recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable. Sub-recipient agrees to submit documentation and demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data.

R10 Quality Assurance Team Contact: Donald M. Brown at (206) 553-0717 or email: brown.donaldM@epa.gov.

G. WQX Requirement (Updated STORET Condition – Water Quality Exchange Replaces STORET) – 3/2020

Sub-recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All water quality data generated in accordance with an EPA approved Quality Assurance Project Plan (QAPP) as a result of this assistance agreement, either directly or by sub-award, will be required to be transmitted into the Water Quality Portal (WQP) using either WQX or WQX web.

Water quality data appropriate for the Water Quality Portal (WQP) include physical, chemical, and biological sample results for water, sediment and fish tissue. The data include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data. The Water Quality Exchange (WQX) is the

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water data schema associated with the EPA, State and Tribal Exchange Network. Using the WQX schema partners map their database structure to the Water Quality Portal structure. WQX web is a web-based tool to convert data into the WQX format for smaller data generators that are not direct partners on the Exchange Network. More information about WQX, WQX web, and the Water Quality Portal, including tutorials, can be found at

<https://www.epa.gov/waterdata/water-quality-data-wqx>.

If activities submitted as match for this federal assistance agreement involve the generation of water quality data, the resulting information must be publicly accessible (in the Water Quality Portal or some other database). Sub-recipients are encouraged to develop a cross walk between any non-WQX database utilized for the storage of water quality data associated with match activities and EPA's Water Quality Exchange (WQX).

H. Riparian Buffers

Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of January 30, 2013 (stamp received date - February 4, 2013) and April 9, 2013 (stamp received date - April 16, 2013), or the October 28, 2013 guidance. Grantees shall confirm in writing projects' consistency with the recommendations referenced above. When developing project proposals, grantees also should consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the grantee must submit the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues.

The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.

I. International Travel (Including Canada) – PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION.

All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your DOH Contract Manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If you have questions, please contact your DOH Contract Manager listed on the approval page of the Award Document.

J. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov

K. Lobbying and Litigation -- PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION.

All Sub-recipients.

- i. The chief executive officer of this sub-recipient agency shall ensure that no grant funds awarded

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under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The sub-recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.

- ii. The sub-recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The sub-recipient shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-recipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any sub-recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a sub-recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the sub-recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA sub-awards.

L. Quality Assurance Requirements (2 CFR 1500.11)

Acceptable Quality Assurance documentation (QAPP) must be submitted to the DOH Contract Manager and NEP Quality Coordinator (NEP QC) within 30 days of the acceptance of this agreement or another date as negotiated with the DOH Contract Manager. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the DOH Contract Manager, in concert with the NEP Quality Coordinator, has approved the quality assurance document. Additional information on these requirements can be found at the EPA Office of Grants and Debarment website: <http://www.epa.gov/ogd/grants/assurance.htm>.

Instructions to Submit Quality Assurance Documents for Review

DOH and the NEP QC will determine if a QAPP is required for this project. If a QAPP is required, sub-recipients will work with DOH and NEP QC to develop and submit a QAPP for approval. The QAPP development and approval process is a multi-step process. More information about QAPPs can be found at <https://ecology.wa.gov/About-us/How-we-operate/Scientific-services/Quality-assurance/Quality-assurance-for-NEP-grantees>.

M. ULO Stretch Goal:

Sub-recipients should manage their programs and sub-award funding in ways that reduce the length of time that federal funds obligated and committed to sub-award projects are "unspent" federal funds, not yet drawn down through disbursements to sub-award sub-recipients.

Assistance agreement sub-recipients are to apply these "stretch" goals throughout the life of the assistance

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agreement and to confer with your DOH Contract Manager whenever instances arise that make attainment of these stretch goals unlikely.

Stretch Goal: All funds should be spent by 2 ½ years of award start date.

Funds Awarded in FY2020 All Should Be Drawn down September 30, 2022.

N. Animal Subjects — PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION.

Sub-recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Sub-recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20, 1985). The nine principles can be viewed at: <http://www.nal.usda.gov/awic/pubs/IACUC/vert.htm>. For additional information about the Principles, the sub-recipient should consult the Guide for Care and Use of Laboratory Animals, prepared by the Institute of Laboratory Animal Resources, National Research Council and can be accessed at: <http://www.nap.edu/readingroom/books/labrats/>.

O. Copyrighted Material and Data – PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION.

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the sub-recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

P. Light Refreshments and/or Meals - PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION

APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):

Unless the event(s) and all of its components are described in the approved contract and budget, the sub-recipient agrees to obtain prior approval from DOH for the use of grant funds for light refreshments and/or

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meals served at meetings, conferences, training workshops and outreach activities (events). The sub-recipient must send requests for approval to the DOH Contract Manager and include:

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

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

Sub-recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the sub-recipient's DOH Contract Manager; however, the EPA Agency Award Official or EPA Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the sub-recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT SUB-RECIPIENTS EXCLUDING STATE UNIVERSITIES:

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

Q. State Grant Cybersecurity - PUGET SOUND PROGRAM WANTS TO HIGHLIGHT THIS DUPLICATE GENERAL TERM AND CONDITION.

- (a) The sub-recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
- (b) (1) EPA must ensure that any connections between the sub-recipient's network or information system and EPA networks used by the sub-recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an

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Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the sub-recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The sub-recipient agrees that any sub-awards it makes under this agreement will require the sub-recipient to comply with the requirements in (b)(1) if the sub-recipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The sub-recipient will be in compliance with this condition: by including this requirement in sub-award agreements; and during sub-recipient monitoring deemed necessary by the sub-recipient under 2 CFR 200.331(d), by inquiring whether the sub-recipient has contacted the EPA Project Officer. Nothing in this condition requires the sub-recipient to contact the EPA Project Officer on behalf of a sub-recipient or to be involved in the negotiation of an Interconnection Service Agreement between the sub-recipient and EPA.

**FEDERAL COMPLIANCE
AND STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES**

In the event federal funds are included in this agreement, added by future amendments(s), or redistributed between fund sources resulting in the provision of federal funds, the following sections apply: "I. Federal Compliance" and "II. Standard Federal Assurances and Certifications". In the instance of inclusion of federal funds as a result of an amendment, the contractor may be designated as a "Subrecipient" and the effective date of the amendment shall also be the date at which these requirements go into effect.

- I. FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. (Refer to Catalog of Domestic Assistance number(s) cited in the "Payment" section of this contract for requirements specific to that fund source.) For clarification regarding any of these elements or details specific to the federal funds in this contract, contact:

Compliance and Internal Control Officer
Office of Financial Services
Department of Health
Post Office Box 47901
Olympia, Washington 98504-7901

- 1. UNIFORM ADMINISTRATIVE GUIDANCE** – The Uniform Administrative Guidance (Supercircular) became effective December 26, 2014 and combines numerous OMB Circulars into one document. This document established requirements which govern expenditure of federal funds. These requirements apply to the Department of Health, as the primary recipient of federal funds, and then follow the funds to the subrecipient. The Uniform Administrative Guidance provides the applicable administrative requirements, cost principles, and audit requirements are identified by subrecipient organization type.

Compliance Matrix

ENTITY TYPE	OMB CIRCULAR		
	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS
State, Local and Indian Tribal Governments & Governmental Hospitals	2 CFR 200 Subpart D	2 CFR 200 Subpart E	2 CFR 200 Subpart F
Non-Profit Organizations	2 CFR 200 Subpart D	2 CFR 200 Subpart E	2 CFR 200 Subpart F
Hospitals	2 CFR 200 Subpart D	45 CFR 74 Appendix E	2 CFR 200 Subpart F
Colleges or Universities & Affiliated Hospitals	2 CFR 200 Subpart D	2 CFR 200 Subpart E	2 CFR 200 Subpart F

- 2. CITIZENSHIP/ALIEN VERIFICATION/DETERMINATION** - The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria.

Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements. Exemptions from the determination/verification requirement is afforded the following programs offered by the Department of Health: Family Planning, Breast, Cervical and Colon Health Program (BCCHP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), WIC Farmers Market Program, Immunization Programs, and Ryan White CARE Act programs and other communicable disease treatment and diagnostic programs.

3. **CIVIL RIGHTS AND NONDISCRIMINATION** - During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.).
 4. **SINGLE AUDIT ACT** - A subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Uniform Administrative Guidance (subpart F) as well as all applicable Federal and State statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of 2 CFR 200 Subpart F.
- II. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Department of Health.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

- D. have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

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

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- B. Establishing an ongoing drug-free awareness program to inform employees about:
- 1) The Dangers of drug abuse in the workplace;
 - 2) The contractor's policy of maintaining a drug-free workplace;
 - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph 1) above;
- D. Notifying the employee in the statement required by paragraph 1), above, that, as a condition of employment under the contract, the employee will:
- 1) Abide by the terms of the statement; and
 - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- E. Notifying the agency in writing within ten calendar days after receiving notice under paragraph D. 2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- F. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph D. 2) with respect to any employee who is so convicted:
- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

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

Compliance and Internal Control Officer
Office of Grants Management
WA State Department of Health
PO Box 47905
Olympia, WA 98504-7905

3. CERTIFICATION REGARDING LOBBYING

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

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

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

Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

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

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

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

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

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

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

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

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

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

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

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

By signing and submitting this proposal, the prospective contractor is providing the certification set out below.

- A. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- C. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
- E. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DOH.
- F. The prospective contractor further agrees by submitting this contract that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction, provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).

- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, DOH may terminate this transaction for cause or default.

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

- A. The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
- 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 contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 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 this certification; and
 - 4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
- B. Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this contract.

CONTRACTOR'S SIGNATURE IS REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
ORGANIZATION NAME: (if applicable)	DATE

FEDERAL ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the contractor, I certify that the contractor:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient

ATTACHMENT 1

- records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
 8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
 11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
 15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

ATTACHMENT 1

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.) which prohibits the use of lead- based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Super circular 2CFR200, Subpart F.
18. Will comply with 2CFR200.216 - Prohibition on certain telecommunications and video surveillance services or equipment - as amended effective August 13, 2020, and any amendments to this section thereafter
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

CONTRACTOR'S SIGNATURE IS REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
ORGANIZATION NAME: (if applicable)	DATE

Federal Funding Accountability and Transparency Act Data Collection Form

This contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act. The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent. To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System number (DUNS®). If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com. The Department of Health (DOH) also encourages registration with the System for Award Management (SAM) to reduce data entry by both DOH and your organization. You may register with SAM free of charge at www.sam.gov. Information about your organization and this contract will be reported by DOH to the federal government as required by P.L. 109-282. This information will then be made available to the public by the federal government on USASpending.gov.

SUBRECIPIENT

1. Legal Name Whatcom County Flood Control Zone District	2. DUNS Number
3. Principle Place of Performance 322 N. Commercial, Suite 110	
3a. City Bellingham	3b. State WA
3c. Zip+4 98225-4050	3d. Country USA

4. Are you registered in SAM? ☐ YES (skip to signature block. Sign, date and return) ☐ NO

5. In the preceding fiscal year did your organization:

- a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
- b. \$25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
- c. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

☐ NO (skip to signature block. Sign, date and return)

☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name of Official	Total Compensation
1.	
2.	
3.	
4.	
5.	

Note: "Total compensation" for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.

By signing this document, the Authorized Representative attests to the information.

Subrecipient's Authorized Representative Sign & Date

DOH will not endorse your subaward until this form is completed and returned.

Federal Funding Accountability and Transparency Act Data Collection Form

FOR DEPARTMENT OF HEALTH USE ONLY

DOH Contract Number GVL24435-2

Contract Description (see instructions and example below)

The purpose of this contract is to expand the successful Whatcom County Pollution Identification and Correction (PIC) program to cover additional drainage areas with commercial, tribal, or recreational shellfish closures or declining water quality. In addition, Whatcom County will continue the PIC program in areas where water quality improvement is still needed, with a particular emphasis on the Nooksack/Portage Bay watershed, including transboundary efforts.

Instructions for Contract Description:

In the first line of the description provide a title for the subrecipient contract that captures the main purpose of the work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the work, how the funds will be used, and what will be accomplished.

Example of a Contract Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Jon Hutchings, Public Works Director

Date

Approved as to form:

Christopher Quinn by Akell 09/28/2021

Christopher Quinn Date
Civil Deputy Prosecuting Attorney

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-587

File ID:	AB2021-587	Version:	1	Status:	Agenda Ready
File Created:	09/30/2021	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham, in the amount of \$250,000 for Whatcom County's share of the reimbursement for the design of West Horton Road extension

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Memo

HISTORY OF LEGISLATIVE FILE

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

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



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

Memorandum

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

Through: Jon Hutchings, Director *JHK*

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

Date: September 28, 2021

Re: **West Horton Rd. Extension; CRP No. 916002**
First Amendment--Interlocal Agreement w/ the City of Bellingham; WCC #201706030
Design of West Horton Rd. Extension

Attached for your review and signature are two (2) originals of the First Amendment to an Interlocal Agreement between the City of Bellingham and Whatcom County associated with the design of the West Horton Rd. Extension, CRP No. 916002.

Requested Action

Public Works respectfully requests that the County Executive sign the Interlocal Agreement amendment originals with the City of Bellingham.

Background and Purpose

The attached amendment to WCC#201706030 provides additional project background and outlines the financial obligations of both the County and the City of Bellingham in the mutual decision to not construct the Phase 2 Horton Rd. extension, located within County right-of-way, and also within the Urban Growth Area. The decision made to not move forward with Phase 2 of the project was due to the high cost of environmental mitigation and the lack of funding to construct this segment within the next 8 to 10 years as required by the federal STP grant received for the design phase.

Funding Amount and Source

The City of Bellingham received a total of \$1,000,000 in federal STP funds for the design phase of the project, and this money has been re-obligated to the County's Marine Drive Reconstruction project, CRP 917001. The City has been reimbursed a total of \$403,612.07 for the 100% design of Horton Rd. Phase 1 and 30% design of Horton Rd. Phase 2, and will reimburse WSDOT for this amount. The County's share of this reimbursement is \$250,000. Expenditure authority for the payment to the City for this amount will be accomplished through a budget transfer made possible as a result of the STP funds now available for Marine Drive instead of local road funds.

Please contact Doug Burghart at extension 6277 if you have any questions or concerns regarding this agreement.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	905900 / Construction
Contract or Grant Administrator:	James P. Karcher, P.E.
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="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: 201706030	
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): n/a CFDA#: n/a	
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? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: CRP 916002	
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 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): \$ 156,070.00 This Amendment Amount: \$ 93,930.00 Total Amended Amount: \$ 250,000.00	Council approval required for: all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
This contract amendment provides additional project background and outlines the financial obligations of both the County and the City of Bellingham in the mutual decision to not construct the Phase 2 Horton Rd. extension, CRP 916002.	
Term of Contract: Not to Exceed	Expiration Date: Upon project completion

Contract Routing:	1. Prepared by: D. Burghart	Date: 9-27-21
	2. Attorney signoff: Chris Quinn	Date: 9/30/21
	3. AS Finance reviewed: M Caldwell	Date: 9/29/21
	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:

**INTERLOCAL AGREEMENT
CITY OF BELLINGHAM - WHATCOM COUNTY
DESIGN OF WEST HORTON ROAD EXTENSION
FIRST AMENDMENT**

THIS FIRST AMENDMENT ("First Amendment") is entered into by and between the City of Bellingham (the "City") and Whatcom County (the "County") (collectively, the "Parties") to amend that certain Interlocal Agreement between the Parties dated July 26, 2017 (City Contract No. 2017-0460; County Contract No. 201706030) regarding the design of the West Horton Road Extension.

WITNESSETH:

WHEREAS, the City and the County desire to extend West Horton Road from its current terminus westward to Northwest Drive ("West Horton Road Extension"); and

WHEREAS, the West Horton Road Extension is located partially within Bellingham City limits (from its current western terminus to Aldrich Road) (the "City Segment") and partially within unincorporated Whatcom County (from Aldrich Road west to Northwest Drive) (the "County Segment"); and

WHEREAS, the portion south of the center of the right of way in the County Segment lies within the Bellingham Urban Growth Area; and

WHEREAS, the City and the County entered into an interlocal agreement dated July 26, 2017 (City Contract No. 2017-0460) ("Agreement") to transfer \$1,000,000 of County Surface Transportation Program (STP) Grant Funding to the City to coordinate the design and cost sharing through the design phase of the West Horton Road Extension (the "Project"); and

WHEREAS, STP Grant Funding is paid by Federal Highways Administration (FHWA) through Washington State Department of Transportation (WSDOT) and Whatcom Council of Governments (WCOG); and

WHEREAS, the Project was divided into two phases: (1) West Horton Road Extension – Phase 1 (City Segment) and (2) West Horton Road Extension – Phase 2 (County Segment); and

WHEREAS, the City acted as the lead agency for the Project on behalf of both the City and County; and

WHEREAS, the City completed design of the City Segment and took the County Segment to 30% design status; and

WHEREAS, the City has received \$403,612.07 in STP grant reimbursement for the full design of the City Segment and 30% design of the County Segment of the Project; and

WHEREAS, the City and County no longer desire to construct this Phase 2 County segment, in the Urban Growth Area, due to the high cost of environmental mitigation and the lack of funding to construct within the next 8-10 yrs as required by the Grant; and

WHEREAS, the City and County have coordinated with WCOG and WSDOT to deobligate the \$1,000,000 of County STP Grant Funding because the full Project will not be completed; and

WHEREAS, the STP Grant Funds originally obligated to the Project must be repaid so that those dollars can be re-obligated to another project in the region; and

WHEREAS, the County and City, in coordination with WCOG and WSDOT, have determined that the County Marine Drive Reconstruction project is an appropriate project for the re-obligation of the \$1,000,000 of County STP Grant Funding; and

WHEREAS, the County and City desire to enter into this First Amendment to set forth the terms and conditions for repayment and re-obligation of the STP Grant Funding initially allocated to the Project; and

WHEREAS, the City will provide the County with all products produced by the design Consultant for the County Segment of the design. This will likely include but is not limited to the following: i.e. topo base map & points, wetland delineation data & reports, Geotech report and CAD files for the design, and all permit applications with exhibits.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the County and the City agree to amend the Agreement as follows:

I. CITY'S RESPONSIBILITIES

1.1 The City shall perform no further design work for the County Segment and shall have no further obligations under the Agreement except as stated in this First Amendment.

1.2 The City shall reimburse WSDOT in the sum of \$403,612.07, representing the full amount of STP Grant Funding expended on the Project for both the City Segment and the County Segment.

1.3 The City shall invoice the County in the amount of \$250,000 which shall be considered the County's fair share of STP Grant funds utilized through April 2021 for design of the County Segment of the Project.

II. COUNTY'S RESPONSIBILITIES

2.1 The County shall pay the City \$250,000 within 30 days of invoicing by the City.

2.2 The County shall coordinate with WCOG and WSDOT to reallocate the de-obligated Project funds (\$1,000,000) to the County's Marine Drive Reconstruction project, keeping the region whole in terms of Federal funding.

III. TERMINATION OF AGREEMENT

Upon fulfillment of the obligations contained in this First Amendment the Agreement shall terminate automatically.

EXECUTED this _____ day of _____, 2021 for **WHATCOM COUNTY** by:

Approved as to Form:

County Executive

Approved Via Email - CA/SM

Sr Deputy Prosecuting Attorney-Civil Div *9/30/21*

EXECUTED this 10 day of September, 2021 for the **CITY OF BELLINGHAM**
by:

Mayor

Departmental Approval

Public Works Director

Attest:

Finance Director

Approved as to Form:

Office of the City Attorney

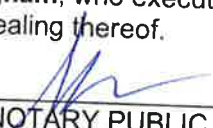
STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

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

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

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 10 day of September, 2021, before me personally appeared **Seth Fleetwood**, to me known to be the **Mayor of City of Bellingham**, 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 7/28/24



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-563

File ID:	AB2021-563	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

Primary Contact Email: dduling@co.whatcom.wa.us <mailto:dduling@co.whatcom.wa.us>

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Blaine for FY2020 Operation Stonegarden (OPSG), in the amount of \$31,923.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **City of Blaine**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and the City of Blaine for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The City of Blaine allocation of the FY2020 OPSG grant award is \$31,923.00

Funding Amount and Source

Funding of \$31,923.00 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Blaine
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? 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#: <u>97.067</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202104016</u>	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>1003521001</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>31,923.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>31,923.000</u>	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: _____	
Subrecipient Agreement to provide federal pass-through grant funds to the City of Blaine to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.	
Term of Contract: 1/1/2021	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: <u>D. Duling</u>	Date: <u>9/15/21</u>
	2. Attorney signoff: <u>template approved via email BW/DD</u>	Date: <u>8/23/21</u>
	3. AS Finance reviewed: <u>template approved via email BB/DD</u>	Date: <u>9/07/21</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
CITY OF BLAINE**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **City of Blaine**, herein after referred to as the "**City**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **City** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **City** is **\$31,923.00**, subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the City

Michael Jones, City Manager
City of Blaine
435 Martin
Blaine, WA 98230
360-332-8311
Email: mjones@cityofblaine.com

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **City** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **City** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **City** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **City** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **City** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **City** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **City** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **City** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **City's** fiscal year(s):

**Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225**

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **City** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **City** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **City's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **City** certifies, by submission of this proposal or contract, that the **City** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **City** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **City** certifies, by submission of this proposal or contract, that the **City** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **City** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **City** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **City** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **City** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **City** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **City** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **City** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **City** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **City** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at:

<https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **City** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **City** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **City** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **City** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **City** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **City** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **City** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **City** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **City** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **City** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **City** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **City**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **City** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **City** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **City** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **City's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **City** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **City** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **City** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **City** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **City** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **City** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The City agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **City** is responsible for all costs exceeding the award amount of **\$31,923.00** used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	29,048.00
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	2,875.00
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	0.00
TOTAL		\$ 31,923.00

Invoicing:

- The **City** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **City** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **City** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **City**. The County may withhold payment of an invoice if the **City** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:


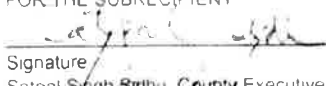

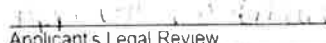
Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199	
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023	
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208	
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS)					
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)	
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ		16 EIN 91-6001383	
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1,2		18 Service Area by Counties Whatcom		19 Women/Minority-Owned State Certified <input type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #	
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Govt <input checked="" type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other		21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency			
22 Subrecipient Selection Process <input checked="" type="checkbox"/> To all who apply & qualify <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO		23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER			
<p>24 PURPOSE & DESCRIPTION</p> <p>The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration.</p> <p>The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.</p>					
<p>IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents, and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.</p>					
<p>In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1. Applicable federal and state statutes and regulations</p> <p>2. DHS/FEMA Award and program documents</p> <p>3. Work Plan, Timeline, and Budget</p> </div> <div style="width: 45%;"> <p>4. Special Terms and Conditions</p> <p>5. General Terms and Conditions, and</p> <p>6. Other provisions of the Agreement incorporated by reference</p> </div> </div>					
<p>WHEREAS, the parties have executed this Agreement on the day and year last specified below:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>FOR THE DEPARTMENT</p> <p> 5/11/2021 Signature Date Regan Anne Hesse, Chief Financial Officer Washington State Military Department</p> <p>BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08/11/2020)</p> </div> <div style="width: 45%;"> <p>FOR THE SUBRECIPIENT</p> <p> Date Signature Date Satpal Singh Sidhu, County Executive Whatcom County</p> <p> 4/16/21 Signature Date Bill Elfo, Sheriff Whatcom County</p> <p>APPROVED AS TO FORM (if applicable)  Date</p> </div> </div>					

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.

- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request prior written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA Form*. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place.

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A.10.
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
- 3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
- 4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
 - 5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

- included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.
6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
 7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
 8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient. as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A 35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A 36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A 37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,657,838.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligor Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM; in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at <https://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator

Agreement Articles

Tue Sep 01 00:00:00 GMT 2020

U.S. Department of Homeland Security
Washington, D.C. 20472



AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE:
PROGRAM:
AGREEMENT NUMBER:

Washington Military Department
Homeland Security Grant Program
EMW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Ciallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown-Skallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities, including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513 including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance and Privacy Template as useful resources respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance/published/help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. section 2225).

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK_GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42 U.S.C. section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56 which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25 Appendix A the full text of which is incorporated here by reference

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170 Appendix A the full text of which is incorporated here by reference in the award terms and conditions

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials

Article XLI - Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants including provisions on technical standards that ensure and enhance interoperable communications

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems. Until the hold is released, the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below. The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below. To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No. 447.

Cybersecurity \$336,550
Soft Targets/Crowded Places \$336,550

Information Sharing and Cooperation \$336,550
Emerging Threats \$336,550

If you have questions about this funding hold or believe it was placed in error please contact the DHS/FEMA Headquarters
Preparedness Officer

BUDGET COST CATEGORIES

Personnel	\$466 958 85
Fringe Benefits	\$140 087 45
Travel	\$14 076 00
Equipment	\$0 00
Supplies	\$9 134 00
Contractual	\$14 941 867 04
Construction	\$0 00
Indirect Charges	\$85 714 66
Other	\$0 00

Obligating Document for Award/Amendment

1a AGREEMENT NO. EMW-2020-SS-00080-S01
 2 AMENDMENT NO. ***
 3 RECIPIENT NO. 916001095G
 4 TYPE OF ACTION AWARD
 5 CONTROL NO. WX03438N2020T
 WX03434N2020T
 WX03435N2020T
 6 RECIPIENT NAME AND ADDRESS
 Washington Military Department
 Building 20
 Camp Murray, WA, 98430-5122
 7 ISSUING FEMA OFFICE AND ADDRESS
 FEMA-GPD
 400 C Street, SW, 3rd floor
 Washington, DC 20472-3645
 POC: 866-927-5646
 8 PAYMENT OFFICE AND ADDRESS
 FEMA Finance Center
 430 Market Street
 Winchester, VA 22603
 9 NAME OF RECIPIENT PROJECT OFFICER
 Gail Cram
 10 NAME OF FEMA PROJECT COORDINATOR
 Central Scheduling and Information Desk
 Phone: 800-368-6498
 Email: Askcsid@dhs.gov
 11 EFFECTIVE DATE OF THIS ACTION
 09/01/2020
 12 METHOD OF PAYMENT
 PARS
 13 ASSISTANCE ARRANGEMENT
 Cost Reimbursement
 14 PERFORMANCE PERIOD
 From: 09/01/2020 To: 08/31/2023
 Budget Period
 09/01/2020 08/31/2023

15 DESCRIPTION OF ACTION

a (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	FEDA NO	ACCOUNTING DATA (ACC'S CODE) XXXX-XX-XXXX-XXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION (+ OR -)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
			\$0.00	\$15,657,838.00	\$15,657,838.00	\$0.00

b To describe changes other than funding data or financial changes, attach schedule and check here
 N/A

16a FOR NON-DISASTER PROGRAMS RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b FOR DISASTER PROGRAMS RECIPIENT IS NOT REQUIRED TO SIGN

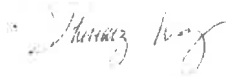
This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above

17 RECIPIENT SIGNATORY OFFICIAL (Name and Title)
 Gail Cram,

DATE:
 Sun Sep 13 19:38:31 GMT
 2020

18 FEMA SIGNATORY OFFICIAL (Name and Title)

DATE:
 Tue Aug 25 18:08:42 GMT
 2020



SHENAUZ SUBRINA WONG . Assistance Officer

WORK PLAN
FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

U.S. Department of Homeland Security
Washington, DC 20472



FEMA

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building 1
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BL.WBL.W-10-008 V0
Fiscal Year: 2020
Amount Approved: \$416,000.00
Operations Order Dates: 09/01/2020 to 08/31/2023
Recipient: Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN

Digitally signed by DELROY A DOWDEN
Date: 2021.03.08 10:59:19 -05:00

Delroy Dowden on behalf of Lindsey Tones
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE



FEMA

October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@dhs.gov if you have any questions.

Sincerely,



Stacey N. Street
Director
Office of Grants Administration

Cc : Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

Whatcom County Sheriff's Office 20OPSG Timeline

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-564

File ID:	AB2021-564	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Everson for FY2020 Operation Stonegarden (OPSG), in the amount of \$43,500.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **City of Everson**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and the City of Everson for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The City of Everson allocation of the FY2020 OPSG grant award is \$43,500.00

Funding Amount and Source

Funding of \$43,500.00 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Everson
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#: <u>97.067</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202104016</u>	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>1003521001</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>43,500.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>43,500.00</u>	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:	
Subrecipient Agreement to provide federal pass-through grant funds to the City of Everson to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.	
Term of Contract: 1/1/2021	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: <u>D. Duling</u>	Date: <u>9/15/21</u>
	2. Attorney signoff: <u>template approved via email BW/DD</u>	Date: <u>8/23/21</u>
	3. AS Finance reviewed: <u>template approved via email BB/DD</u>	Date: <u>9/7/21</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
CITY OF EVERSON**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **City of Everson**, herein after referred to as the "**City**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **City** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **City** is **\$43,500.00**, subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the City

John Perry, Mayor
City of Everson
PO Box 315
Everson, WA 98247
Email: mayor@ci.everson.wa.us

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **City** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **City** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **City** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **City** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **City** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **City** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **City** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **City** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **City's** fiscal year(s):

Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **City** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **City** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **City's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **City** certifies, by submission of this proposal or contract, that the **City** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **City** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **City** certifies, by submission of this proposal or contract, that the **City** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **City** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **City** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **City** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **City** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **City** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **City** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **City** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **City** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **City** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at: <https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **City** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **City** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **City** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **City** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **City** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **City** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **City** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **City** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **City** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **City** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **City** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **City**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **City** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **City** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **City** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **City's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **City** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **City** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **City** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **City** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **City** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **City** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The City agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **City** is responsible for all costs exceeding the award amount of **\$43,500.00** used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	41,000.00
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	2,500.00
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	0.00
TOTAL		\$ 43,500.00

Invoicing:

- The **City** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **City** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **City** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **City**. The County may withhold payment of an invoice if the **City** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:


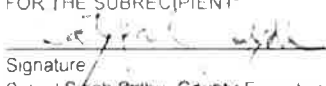

Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199	
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023	
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208	
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS)					
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)	
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ		16 EIN 91-6001383	
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1,2		18 Service Area by County(ies) Whatcom		19 Women/Minority-Owned State Certified <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #	
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input checked="" type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other		21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input checked="" type="checkbox"/> Interagency			
22 Subrecipient Selection Process <input checked="" type="checkbox"/> To all who apply & qualify <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filled w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER			
24 PURPOSE & DESCRIPTION The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration. The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.					
IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable federal and state statutes and regulations 2. DHS/FEMA Award and program documents 3. Work Plan, Timeline, and Budget 4. Special Terms and Conditions 5. General Terms and Conditions, and 6. Other provisions of the Agreement incorporated by reference					
WHEREAS, the parties have executed this Agreement on the day and year last specified below:					
FOR THE DEPARTMENT  Signature _____ Date 5/11/2021 Regan Anne Hesse, Chief Financial Officer Washington State Military Department			FOR THE SUBRECIPIENT:  Signature _____ Date _____ Satpal Singh Sidhu, County Executive Whatcom County		
BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08/11/2020)			 Signature _____ Date 4/16/21 Bill Elfo, Sheriff Whatcom County		
			APPROVED AS TO FORM (if applicable)  Applicant's Legal Review _____ Date _____		

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.

- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA Form*. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place.

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A.10.
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
- 3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, *Pub. L. No. 115-232 (2018)*. Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
- 4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
- 5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.

6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A 34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A 35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A 36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A 37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No. EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations! On behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,657,338.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the NO Grants system at <https://portal.fema.gov>

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM, therefore, it is imperative that the information is correct. The System for Award Management is located at <https://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator

Agreement Articles

Tue Sep 01 00:00 00 GMT 2020



U S Department of Homeland Security
Washington, D C 20472

AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE: Washington Military Department
PROGRAM: Homeland Security Grant Program
AGREEMENT NUMBER: EMW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Clallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown-Skallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XI, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units (i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)) be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance, and Privacy Template as useful resources, respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance/published-help-department-supported-organizations-provide-meaningful-access-people-united> and additional resources on <http://www.lep.gov>.

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974 (codified as amended at 15 U.S.C. section 2225).

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition.

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK.GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42 U.S. Code, section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C F R Part 25, Appendix A the full text of which is incorporated here by reference

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C F R Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials

Article XLI - Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants including provisions on technical standards that ensure and enhance interoperable communications

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems. Until the hold is released, the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below. The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below. To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No. 447.

Cybersecurity \$336,550
Soft Targets/Crowded Places \$336,550

Information Sharing and Cooperation \$336 550
Emerging Threats \$336 550

If you have questions about this funding hold or believe it was placed in error please contact the DHS/FEMA Headquarters
Preparedness Officer

BUDGET COST CATEGORIES

Personnel	\$466 958 85
Fringe Benefits	\$140 087 45
Travel	\$14 076 00
Equipment	\$0 00
Supplies	\$9 134 00
Contractual	\$14 941 867 04
Construction	\$0 00
Indirect Charges	\$85 714 66
Other	\$0 00

Obligating Document for Award/Amendment

1a. AGREEMENT NO EMW-2020-SS-00080-S01	2. AMENDMENT NO ***	3. RECIPIENT NO 916001095G	4. TYPE OF ACTION AWARD	5. CONTROL NO WN03438N2020T WN03434N2020T WN03435N2020T
6. RECIPIENT NAME AND ADDRESS Washington Military Department Building 20 Camp Murray, WA 98430 - 5122	7. ISSUING FEMA OFFICE AND ADDRESS FEMA-GPD 400 C Street, SW, 3rd floor Washington, DC 20472-3645 POC: 866-927-5646	8. PAYMENT OFFICE AND ADDRESS FEMA Finance Center 430 Market Street Winchester, VA 22603		
9. NAME OF RECIPIENT PROJECT OFFICER Gail Cram	PHONE NO 253-512-7472	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov		
11. EFFECTIVE DATE OF THIS ACTION 09/01/2020	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement	14. PERFORMANCE PERIOD From: 09/01/2020 To: 08/31/2023 Budget Period 09/01/2020 08/31/2023	

15. DESCRIPTION OF ACTION
a. (Indicate funding data for awards or financial changes)

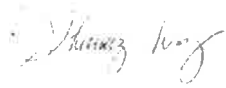
PROGRAM NAME ACRONYM	CFDA NO	ACCOUNTING DATA (ACC'S CODE) XXXX-XX-XXXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
			\$0.00	\$15,657,838.00	\$15,657,838.00	\$0.00

b. To describe changes other than funding data or financial changes, attach schedule and check here
N/A

16 a. FOR NON-DISASTER PROGRAMS, RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address).
Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b. FOR DISASTER PROGRAMS, RECIPIENT IS NOT REQUIRED TO SIGN.
This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) Gail Cram	DATE Sun Sep 13 19:38:31 GMT 2020
18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE Tue Aug 25 18:08:42 GMT 2020



SHENAUZ SUBRINA WONG, Assistance Officer

WORK PLAN**FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)**

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies.
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

Attachment E

U.S. Department of Homeland Security
Washington, DC 20472**FEMA**

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building I
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BL.WBL.W-10-008 V0**Fiscal Year:** 2020**Amount Approved:** \$416,000.00**Operations Order Dates:** 09/01/2020 to 08/31/2023**Recipient:** Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY - LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN

Digitally signed by DELROY A DOWDEN
Date: 2021.04.08 10:59:19 -0500

Delroy Dowden on behalf of Lindsey Tomes
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE



FEMA

October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@fema.dhs.gov if you have any questions.

Sincerely,



Stacey N. Street
Director
Office of Grants Administration

Cc : Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

**Whatcom County Sheriff's Office
20OPSG Timeline**

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-565

File ID:	AB2021-565	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Ferndale for FY2020 Operation Stonegarden (OPSG), in the amount of \$63,732.50

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **City of Ferndale**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and the City of Ferndale for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The City of Ferndale allocation of the FY2020 OPSG grant award is \$63,732.50

Funding Amount and Source

Funding of \$63,732.50 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Ferndale
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#: <u>97.067</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/>	
If yes, Whatcom County grant contract number(s): <u>202104016</u>	
Is this contract the result of a RFP or Bid process? Contract	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>1003521001</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>63,732.50</u>	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:
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ <u>63,732.50</u>	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.
Summary of Scope:	3. Bid or award is for supplies.
Subrecipient Agreement to provide federal pass-through grant funds to the City of Ferndale to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.	
Term of Contract: <u>1/1/2021</u>	Expiration Date: <u>12/31/2022</u>

Contract Routing:	1. Prepared by: <u>D. Duling</u>	Date: <u>9/15/21</u>
	2. Attorney signoff: <u>template approved via email BW/DD</u>	Date: <u>8/23/21</u>
	3. AS Finance reviewed: <u>template approved via email BB/DD</u>	Date: <u>9/07/21</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
CITY OF FERNDALE**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **City of Ferndale**, herein after referred to as the "**City**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **City** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **City** is **\$63,732.50**, subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the City

Greg Hansen, Mayor
City of Ferndale
PO Box 936
Ferndale, WA 98248
360-685-2350
Email: GregHansen@cityofferndale.org

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **City** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **City** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **City** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **City** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **City** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **City** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **City** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **City** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **City's** fiscal year(s):

**Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225**

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **City** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **City** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **City's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **City** certifies, by submission of this proposal or contract, that the **City** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **City** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **City** certifies, by submission of this proposal or contract, that the **City** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **City** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **City** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **City** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **City** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **City** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **City** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **City** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **City** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **City** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at: <https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **City** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **City** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **City** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **City** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **City** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **City** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **City** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **City** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **City** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **City** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **City** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **City**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **City** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **City** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **City** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **City's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **City** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **City** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **City** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **City** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **City** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **City** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The City agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **City** is responsible for all costs exceeding the award amount of **\$63,732.50** used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	41,018.00
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	4,345.50
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	18,369.00
TOTAL		\$ 63,732.50

Invoicing:

- The **City** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **City** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **City** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **City**. The County may withhold payment of an invoice if the **City** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:

Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199	
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023	
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208	
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS)					
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)	
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ		16 EIN 91-6001383	
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1 2		18 Service Area by County(ies) Whatcom		19 Women/Minority-Owned State Certified <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #	
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other		21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency			
22 Subrecipient Selection Process <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Sole Source <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A		23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input checked="" type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER			
24 PURPOSE & DESCRIPTION The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration. The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C, and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.					
IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents, and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable federal and state statutes and regulations; 2. DHS/FEMA Award and program documents; 3. Work Plan, Timeline, and Budget; 4. Special Terms and Conditions; 5. General Terms and Conditions; and 6. Other provisions of the Agreement incorporated by reference.					
WHEREAS, the parties have executed this Agreement on the day and year last specified below:					
FOR THE DEPARTMENT  Signature _____ Date 5/11/2021 Regan Anne Hesse, Chief Financial Officer Washington State Military Department			FOR THE SUBRECIPIENT:  Signature _____ Date _____ Satpal Singh Sidhu, County Executive Whatcom County		
BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08/11/2020)			 Signature _____ Date 11/16/2021 Bill Eito, Sheriff Whatcom County		
			APPROVED AS TO FORM (if applicable):  Signature _____ Date _____		
			Applicant's Legal Review _____ Signature _____ Date _____		

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.
- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the Department an Audit Certification/FFATA Form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A 10.
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.

6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient. as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Subrecipient. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A.37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,657,338.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the NOI Grants system at <https://portal.fema.gov>

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at <https://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator

Agreement Articles

Tue Sep 01 00:00:00 GMT 2020



U S Department of Homeland Security
Washington, D C 20472

AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE:
PROGRAM:
AGREEMENT NUMBER:

Washington Military Department
Homeland Security Grant Program
EMVW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government organization, or community, but rather require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Clallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown-Skallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513 including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units (i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)) be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance and Privacy Template as useful resources respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services

For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974 (codified as amended at 15 U.S.C. section 2225).

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition.

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK_GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C F R Part 25 Appendix A the full text of which is incorporated here by reference

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C F R Part 170 Appendix A the full text of which is incorporated here by reference in the award terms and conditions

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act Pub L No 94- 163 (1975) (codified as amended at 42 U S C section 6201 et seq), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U S C section 2409 41 U S C section 4712 and 10 U S C section 2324 41 U S C sections 4304 and 4310

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt Examples of relevant debt include delinquent payroll and other taxes audit disallowances and benefit overpayments (See OMB Circular A-129)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s) logos crests or reproductions of flags or likenesses of DHS agency officials including use of the United States Coast Guard seal logo crests or reproductions of flags or likenesses of Coast Guard officials

Article XLI - Notice of Funding Opportunity Requirements

All the instructions guidance limitations and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions All recipients must comply with any such requirements set forth in the program NOFO

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants including provisions on technical standards that ensure and enhance interoperable communications

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique specific or modified county level tribal or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP) The recipient will receive the official notification of approval from FEMA/GPD

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems Until the hold is released the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No 447

Cybersecurity \$336,550
Soft Targets/Crowded Places \$336,550

Information Sharing and Cooperation \$336,550
Emerging Threats \$336,550

If you have questions about this funding hold or believe it was placed in error, please contact the DHS/FEMA Headquarters Preparedness Officer.

BUDGET COST CATEGORIES

Personnel	\$466,958.85
Fringe Benefits	\$140,087.45
Travel	\$14,076.00
Equipment	\$0.00
Supplies	\$9,134.00
Contractual	\$14,941,867.04
Construction	\$0.00
Indirect Charges	\$85,714.66
Other	\$0.00

Obligating Document for Award/Amendment

1a AGREEMENT NO
EMW-2020-SS-00080-S01

2 AMENDMENT NO

3 RECIPIENT NO
916001095G

4 TYPE OF ACTION
AWARD

5 CONTROL NO
WX03438N2020T
WX03434N2020T
WX03435N2020T

6 RECIPIENT NAME AND ADDRESS
Washington Military Department
Building 20
Camp Murray, WA, 98430 - 5122

7 ISSUING FEMA OFFICE AND ADDRESS
FEMA-GPD
400 C Street, SW, 3rd floor
Washington, DC 20472-3645
POC: 866-927-5646

8 PAYMENT OFFICE AND ADDRESS
FEMA Finance Center
430 Market Street
Winchester, VA 22603

9 NAME OF RECIPIENT PROJECT OFFICER
Gail Cram

10 NAME OF FEMA PROJECT COORDINATOR
Central Scheduling and Information Desk
Phone: 800-368-6498
Email: Askesid@dhs.gov

11 EFFECTIVE DATE OF THIS ACTION
09/01/2020

12 METHOD OF PAYMENT
PARS

13 ASSISTANCE ARRANGEMENT
Cost Reimbursement

14 PERFORMANCE PERIOD
From: 09/01/2020 To: 08/31/2023
Budget Period
09/01/2020 08/31/2023

1.5 DESCRIPTION OF ACTION

a (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO	ACCOUNTING DATA (ACC'S CODE) XXXX-XXX-XXXXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
			\$0.00	\$15,657,838.00	\$15,657,838.00	\$0.00

b To describe changes other than funding data or financial changes, attach schedule and check here
N/A

16a FOR NON-DISASTER PROGRAMS RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b FOR DISASTER PROGRAMS RECIPIENT IS NOT REQUIRED TO SIGN

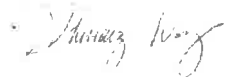
This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17 RECIPIENT SIGNATORY OFFICIAL (Name and Title)
Gail Cram,

DATE
Sun Sep 13 19:38:31 GMT
2020

18 FEMA SIGNATORY OFFICIAL (Name and Title)

DATE
Tue Aug 25 18:08:42 GMT
2020



SHENAUZ SUBRINA WONG . Assistance Officer

WORK PLAN
FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies.
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

Attachment E

U.S. Department of Homeland Security
Washington, DC 20472**FEMA**

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building 1
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BL.WBL.W-10-008 V0**Fiscal Year:** 2020**Amount Approved:** \$416,000.00**Operations Order Dates:** 09/01/2020 to 08/31/2023**Recipient:** Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN Digitally signed by DELROY A DOWDEN
Date: 2021.03.05 10:59:19 -05'00'

Delroy Dowden on behalf of Lindsey Tones
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE



October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@fema.dhs.gov if you have any questions.

Sincerely,

Stacey N. Street
Director
Office of Grants Administration

Cc : Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

**Whatcom County Sheriff's Office
20OPSG Timeline**

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-566

File ID:	AB2021-566	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for FY2020 Operation Stonegarden (OPSG), in the amount of \$65,000.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **City of Lynden**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and the City of Lynden for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The City of Lynden allocation of the FY2020 OPSG grant award is \$65,000.00

Funding Amount and Source

Funding of \$65,000.00 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office								
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security								
Contract or Grant Administrator:	Doug Chadwick, Undersheriff								
Contractor's / Agency Name:	City of Lynden								
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <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#: <u>97.067</u>									
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202104016</u>									
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>1003521001</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: <table border="0"> <tr> <td><input type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Goods and services provided due to an emergency</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input checked="" type="checkbox"/> Interlocal Agreement (between Governments).</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> </table>		<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency	<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.	<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency								
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).								
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.								
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.								
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>65,000.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>65,000.00</u>	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:									
Subrecipient Agreement to provide federal pass-through grant funds to the City of Lynden to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.									
Term of Contract: 1/1/2021	Expiration Date: 12/31/2022								

Contract Routing:	1. Prepared by: D. Duling	Date: 9/15/21
	2. Attorney signoff: template approved via email BW/DD	Date: 8/23/21
	3. AS Finance reviewed: template approved via email BB/DD	Date: 9/07/21
	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: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
CITY OF LYNDEN**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **City of Lynden**, herein after referred to as the "**City**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **City** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **City** is **\$65,000.00**, subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the City

Scott Korthuis, Mayor
City of Lynden
300 4th Street
Lynden, WA 98264
360-354-1170
Email: korthuiss@lyndenwa.org

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **City** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **City** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **City** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **City** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **City** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **City** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **City** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **City** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **City's** fiscal year(s):

**Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225**

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **City** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **City** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **City's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **City** certifies, by submission of this proposal or contract, that the **City** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **City** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **City** certifies, by submission of this proposal or contract, that the **City** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **City** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **City** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **City** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **City** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **City** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **City** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **City** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **City** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **City** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at: <https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **City** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **City** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **City** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **City** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **City** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **City** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **City** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **City** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **City** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **City** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **City** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **City**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **City** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **City** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **City** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **City's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **City** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **City** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **City** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **City** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **City** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **City** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The City agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **City** is responsible for all costs exceeding the award amount of **\$65,000.00** used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	60,000.00
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	2,600.00
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	2,400.00
TOTAL		\$ 65,000.00

Invoicing:

- The **City** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **City** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **City** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **City**. The County may withhold payment of an invoice if the **City** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:

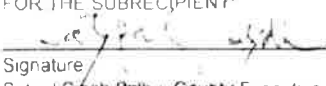
Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199	
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023	
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208	
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS):					
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)	
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ		16 EIN 91-6001383	
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1 2		18 Service Area by County(ies) Whatcom		19 Women/Minority Owned State Certified <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #	
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input checked="" type="checkbox"/> Other		21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency			
22 Subrecipient Selection Process <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Sole Source <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input checked="" type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER			
24 PURPOSE & DESCRIPTION The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration. The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C, and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.					
IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable federal and state statutes and regulations. 2. DHS/FEMA Award and program documents. 3. Work Plan, Timeline, and Budget. 4. Special Terms and Conditions. 5. General Terms and Conditions, and 6. Other provisions of the Agreement incorporated by reference.					
WHEREAS, the parties have executed this Agreement on the day and year last specified below:					
FOR THE DEPARTMENT  Signature _____ Date 5/11/2021 Regan Anne Hesse, Chief Financial Officer Washington State Military Department			FOR THE SUBRECIPIENT:  Signature _____ Date _____ Satpal Singh Sidhu, County Executive Whatcom County		
BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08/11/2020)			 Signature _____ Date 4/16/21 Bill Eito, Sheriff Whatcom County		
			APPROVED AS TO FORM (if applicable):  Applicant's Legal Review _____ Date _____		

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department

- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA Form*. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place.

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A.10.
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
- 3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
- 4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
- 5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.

6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "*Equal Employment Opportunity*" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "*Amending Executive Order 11246 Relating to Equal Employment Opportunity*," and implementing regulations at 41 CFR part 60, "*Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "*Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction*"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "*Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or*

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A.37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No. EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations! On behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,657,338.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>.

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at: <https://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator

U.S. Department of Homeland Security
Washington, D.C. 20472



AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE:
PROGRAM:
AGREEMENT NUMBER:

Washington Military Department
Homeland Security Grant Program
EMW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Clallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown Sklallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.s) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. section 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units (i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)) be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance, and Privacy Template as useful resources respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published/help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974 (codified as amended at 15 U.S.C. section 2225).

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C F R Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK_GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42 U.S. Code, section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25 Appendix A the full text of which is incorporated here by reference

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170 Appendix A the full text of which is incorporated here by reference in the award terms and conditions

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409 41 U.S.C. section 4712 and 10 U.S.C. section 2324 41 U.S.C. sections 4304 and 4310

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials

Article XLI - Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants including provisions on technical standards that ensure and enhance interoperable communications

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems. Until the hold is released, the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below. The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below. To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No. 447.

Cybersecurity: \$336,550
Soft Targets/Crowded Places: \$336,550

Information Sharing and Cooperation \$336,550
Emerging Threats \$336,550

If you have questions about this funding hold or believe it was placed in error, please contact the DHS/FEMA Headquarters Preparedness Officer

BUDGET COST CATEGORIES

Personnel	\$466,958.85
Fringe Benefits	\$140,087.45
Travel	\$14,076.00
Equipment	\$0.00
Supplies	\$9,134.00
Contractual	\$14,941,867.04
Construction	\$0.00
Indirect Charges	\$85,714.66
Other	\$0.00

Obligating Document for Award/Amendment

1a. AGREEMENT NO. EMW-2020-SS-00080-S01
 2. AMENDMENT NO. ***
 3. RECIPIENT NO. 916001095G
 4. TYPE OF ACTION AWARD
 5. CONTROL NO. WX03438N2020T, WX03434N2020T, WX03435N2020T

6. RECIPIENT NAME AND ADDRESS
 Washington Military Department
 Building 20
 Camp Murray, WA. 98430-5122
 7. ISSUING FEMA OFFICE AND ADDRESS
 FEMA-GPD
 400 C Street, SW, 3rd floor
 Washington, DC 20472-3645
 POC: 866-927-5646
 8. PAYMENT OFFICE AND ADDRESS
 FEMA Finance Center
 430 Market Street
 Winchester, VA 22603

9. NAME OF RECIPIENT PROJECT OFFICER
 Gail Cram
 10. NAME OF FEMA PROJECT COORDINATOR
 Central Scheduling and Information Desk
 Phone: 800-368-6498
 Email: Askcsid@dhs.gov

11. EFFECTIVE DATE OF THIS ACTION
 09/01/2020
 12. METHOD OF PAYMENT
 PARS
 13. ASSISTANCE ARRANGEMENT
 Cost Reimbursement
 14. PERFORMANCE PERIOD
 From: 09/01/2020 To: 08/31/2023
 Budget Period
 09/01/2020 08/31/2023

1.5 DESCRIPTION OF ACTION

a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XX-XXXX-XXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION (+ OR -)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
			\$0.00	\$15,657,838.00	\$15,657,838.00	\$0.00

b. To describe changes other than funding data or financial changes, attach schedule and check here
 N/A

16a. FOR NON-DISASTER PROGRAMS, RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address).
 Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

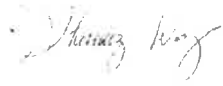
16b. FOR DISASTER PROGRAMS, RECIPIENT IS NOT REQUIRED TO SIGN.
 This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)
 Gail Cram

DATE
 Sun Sep 13 19:38:31 GMT
 2020

18. FEMA SIGNATORY OFFICIAL (Name and Title)

DATE
 Tue Aug 25 18:08:42 GMT
 2020



SHENAUZ SUBRINA WONG, Assistance Officer

WORK PLAN
FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies.
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

Attachment E

U.S. Department of Homeland Security
Washington, DC 20472

**FEMA**

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building I
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BL.WBL.W-10-008 V0**Fiscal Year:** 2020**Amount Approved:** \$416,000.00**Operations Order Dates:** 09/01/2020 to 08/31/2023**Recipient:** Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN

Digitally signed by DELROY A DOWDEN
Date: 2021.03.08 10:59:19 -0500

Delroy Dowden on behalf of Lindsey Tomes
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE



FEMA

October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@fema.dhs.gov if you have any questions.

Sincerely,

Stacey N. Street
Director
Office of Grants Administration

Cc: Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

**Whatcom County Sheriff's Office
20OPSG Timeline**

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-567

File ID:	AB2021-567	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Sumas for FY2020 Operation Stonegarden (OPSG), in the amount of \$44,927.50

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **City of Sumas**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and the City of Sumas for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The City of Sumas allocation of the FY2020 OPSG grant award is \$44,927.50

Funding Amount and Source

Funding of \$44,927.50 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	City of Sumas
Is this a New Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> 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 #: _____	
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#: <u>97.067</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202104016</u>	
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>1003521001</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>44,927.50</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>44,927.50</u>	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: _____	
Subrecipient Agreement to provide federal pass-through grant funds to the City of Sumas to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.	
Term of Contract: 1/1/2021 Expiration Date: 12/31/2022	

Contract Routing:	1. Prepared by: D. Duling	Date: 9/15/21
	2. Attorney signoff: template approved via email BW/DD	Date: 8/23/21
	3. AS Finance reviewed: template approved via email BB/DD	Date: 9/07/21
	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: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
CITY OF SUMAS**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **City of Sumas**, herein after referred to as the "**City**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **City** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **City** is **\$44,927.50** subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the City

Kyle Christensen, Mayor
City of Sumas
PO Box 9
Sumas, WA 98295
360-988-0229
Email: kchristensen@cityofsumas.com

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **City** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **City** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **City** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **City** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **City** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **City** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **City** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **City** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **City's** fiscal year(s):

Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **City** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **City** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **City's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **City** certifies, by submission of this proposal or contract, that the **City** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **City** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **City** certifies, by submission of this proposal or contract, that the **City** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **City** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **City** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **City** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **City** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **City** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **City** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **City** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **City** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **City** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at:

<https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **City** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **City** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **City** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **City** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **City** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **City** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **City** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **City** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **City** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **City** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **City** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **City**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **City** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **City** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **City** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **City's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **City** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **City** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **City** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **City** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **City** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **City** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The City agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **City** is responsible for all costs exceeding the award amount of **\$44,927.50**.

Federal grant program requirements affirm that federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	33,500.00
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	4,427.50
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	7,000.00
TOTAL		\$44,927.50

Invoicing:

- The **City** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **City** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **City** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **City**. The County may withhold payment of an invoice if the **City** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:

Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199	
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023	
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208	
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS)					
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)	
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ			16 EIN 91-6001383
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1,2		18 Service Area by County(ies) Whatcom		19 Women/Minority-Owned State Certified <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #	
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Govt <input checked="" type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other			21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input type="checkbox"/> Agreement <input checked="" type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
22 Subrecipient Selection Process <input checked="" type="checkbox"/> To all who apply & qualify <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER		
24 PURPOSE & DESCRIPTION The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities including planning, organization, equipment purchase, training, exercises, and management and administration. The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.					
IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable federal and state statutes and regulations 2. DHS/FEMA Award and program documents 3. Work Plan, Timeline, and Budget 4. Special Terms and Conditions 5. General Terms and Conditions, and 6. Other provisions of the Agreement incorporated by reference.					
WHEREAS, the parties have executed this Agreement on the day and year last specified below:					
FOR THE DEPARTMENT  Signature _____ Date 5/11/2021 Regan Anne Hesse, Chief Financial Officer Washington State Military Department			FOR THE SUBRECIPIENT  Signature _____ Date _____ Satpal Singh Bhatu, County Executive Whatcom County		
BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08/11/2020)			 Signature _____ Date 4/10/21 Bill Elfo, Sheriff Whatcom County		
APPROVED AS TO FORM (if applicable)  Applicant's Legal Review _____ Date _____					

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.

- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA Form*. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place.

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A.10
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
- 3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications. Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
- 4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
 - 5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.

6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A.35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A.37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations. On behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,657,838.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligor Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN, and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at: <https://www.sam.gov>

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator

Agreement Articles

Tue Sep 01 00 00 00 GMT 2020



U S Department of Homeland Security
Washington, D C 20472

AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE:
PROGRAM:
AGREEMENT NUMBER:

Washington Military Department
Homeland Security Grant Program
EMW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Clallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown-Skallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities, including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513 including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units (i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)) be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance, and Privacy Template as useful resources, respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services

For additional assistance and information regarding language access obligations, please refer to the DHS Recipient

Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-miles> and additional resources on <http://www.lep.gov>

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. section 2225.)

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42 U.S. Code, section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests, or reproductions of flags or likenesses of Coast Guard officials.

Article XLI - Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems. Until the hold is released, the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below. The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below. To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No. 447.

Cybersecurity \$336,550
Soft Targets/Crowded Places \$336,550

Information Sharing and Cooperation \$336 550
Emerging Threats \$336 550

If you have questions about this funding hold or believe it was placed in error please contact the DHS/FEMA Headquarters
Preparedness Officer

BUDGET COST CATEGORIES

Personnel	\$466 958 85
Fringe Benefits	\$140 087 45
Travel	\$14 076 00
Equipment	\$0 00
Supplies	\$9 134 00
Contractual	\$14 941 867 04
Construction	\$0 00
Indirect Charges	\$85 714 66
Other	\$0 00

Obligating Document for Award/Amendment

1a AGREEMENT NO EMW-2020-SS-00080-S01	2 AMENDMENT NO ***	3 RECIPIENT NO 916001095G	4 TYPE OF ACTION AWARD	5 CONTROL NO WX03438N2020T WX03434N2020T WX03435N2020T		
6 RECIPIENT NAME AND ADDRESS Washington Military Department Building 20 Camp Murray, WA, 98430-5122	7 ISSUING FEMA OFFICE AND ADDRESS FEMA-GPD 400 C Street, SW, 3rd floor Washington, DC 20472-3645 POC: 866-927-5646	8 PAYMENT OFFICE AND ADDRESS FEMA Finance Center 430 Market Street Winchester, VA 22603				
9 NAME OF RECIPIENT PROJECT OFFICER Gail Cram	PHONE NO 253-512-7472	10 NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov				
11 EFFECTIVE DATE OF THIS ACTION 09/01/2020	12 METHOD OF PAYMENT PARS	13 ASSISTANCE ARRANGEMENT Cost Reimbursement	14 PERFORMANCE PERIOD From: 09/01/2020 To: 08/31/2023 Budget Period 09/01/2020 08/31/2023			
15 DESCRIPTION OF ACTION a (Indicate funding data for awards or financial changes)						
PROGRAM NAME ACRONYM	CFDA NO	ACCOUNTING DATA (ACCS CODE) XXXX-XX-XXXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
			\$0.00	\$15,657,838.00	\$15,657,838.00	\$0.00

b To describe changes other than funding data or financial changes, attach schedule and check here
N/A

16 a FOR NON-DISASTER PROGRAMS RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records

16b FOR DISASTER PROGRAMS RECIPIENT IS NOT REQUIRED TO SIGN

This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above

17 RECIPIENT SIGNATORY OFFICIAL (Name and Title)
Gail Cram

DATE
Sun Sep 13 19:38:31 GMT
2020

18 FEMA SIGNATORY OFFICIAL (Name and Title)

DATE
Tue Aug 25 18:08:42 GMT
2020



SHENAUZ SUBRINA WONG, Assistance Officer

WORK PLAN
FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies.
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

Attachment E

U.S. Department of Homeland Security
Washington, DC 20472

**FEMA**

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building 1
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BLWBLW-10-008 V0**Fiscal Year:** 2020**Amount Approved:** \$416,000.00**Operations Order Dates:** 09/01/2020 to 08/31/2023**Recipient:** Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN

Digitally signed by DELROY A DOWDEN
Date: 2021.05.08 10:59:19 -0500

Delroy Dowden on behalf of Lindsey Tomes
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE



FEMA

October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@fema.dhs.gov if you have any questions.

Sincerely,



Stacey N. Street
Director
Office of Grants Administration

Cc : Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

**Whatcom County Sheriff's Office
20OPSG Timeline**

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-568

File ID:	AB2021-568	Version:	1	Status:	Agenda Ready
File Created:	09/23/2021	Entered by:	DDuling@co.whatcom.wa.us		
Department:	Sheriff's Office	File Type:	Interlocal		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Department of Fish and Wildlife for FY2020 Operation Stonegarden (OPSG), in the amount of \$27,335.00

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

HISTORY OF LEGISLATIVE FILE

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

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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

MEMORANDUM

To: Satpal Sidhu, County Executive

From: Bill Elfo, Sheriff 

Date: September 16, 2021

Subject: **Washington Department of Fish and Wildlife**
Sub-Recipient Agreement
Department of Homeland Security FY2020 Operation Stonegarden (OPSG)

Enclosed for your review and signature are two (2) original sub-recipient agreements between Whatcom County Sheriff's Office and Washington Department of Fish and Wildlife for Department of Homeland Security FY2020 Operation Stonegarden (OPSG).

Background and Purpose

OPSG funds are provided to enhance the cooperation and coordination among Local, Tribal, Territorial, State and Federal law enforcement agencies in a joint mission to secure the borders of the United States. In coordination with U.S. Customs and Border Protection/Border Patrol (CBP/BP), participating agencies will provide an enhanced law enforcement presence in the border area. Each agency will perform duties normal to its agency's mission while providing additional law enforcement in support of the border security mission.

Participating agencies will not enforce Title 8 (U.S. Immigration Law)

The Washington Department of Fish and Wildlife allocation of the FY2020 OPSG grant award is \$27,335.00

Funding Amount and Source

Funding of \$27,335.00.00 is provided by U.S. Department of Homeland Security, Federal Emergency Management Agency, Operation Stonegarden Program (OPSG) FY2020 Grant, CFDA #97.067, awarded to Whatcom County Sheriff's Office (WC Contract #202104016).

Please contact Undersheriff Doug Chadwick at ext. 6618 if you have any questions regarding this agreement.

Thank you.

enclosure

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations/ 352096 Homeland Security
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	Washington Department of Fish and Wildlife
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#: <u>97.067</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202104016</u>	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>1003521001</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>27,335.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>27,335.00</u>	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: _____	
Subrecipient Agreement to provide federal pass-through grant funds to the Washington Fish and Wildlife Police to enhance border security. Funding originates from U.S. Department of Homeland Security FFY2020 Operation Stonegarden (OPSG) Program, CFDA No. 97.067, and passes through Washington State Military Department and Whatcom County.	
Term of Contract: 1/1/2021	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: <u>D. Duling</u>	Date: <u>9/15/21</u>
	2. Attorney signoff: <u>Template approved via email BW/DD</u>	Date: <u>8/23/21</u>
	3. AS Finance reviewed: <u>Template approved via email BB/DD</u>	Date: <u>9/07/21</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Last edited 07/06/20

**SUB-RECIPIENT AGREEMENT
BETWEEN
WHATCOM COUNTY SHERIFF'S OFFICE
AND
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

THIS SUB-RECIPIENT AGREEMENT is made and entered into, by and between, Whatcom County Sheriff's Office, herein after referred to as the "County," and the **Washington Department of Fish and Wildlife**, herein after referred to as the "**WDFW**" (also referenced and considered a subrecipient under the provisions of this agreement).

This is a sub-grant of the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Federal Funding Source Agreement #EMW-2020-SS-00080, Federal Fiscal Year (FFY) 2020 Operation Stonegarden Program (OPSG), CFDA No. & Title: 97.067 – Homeland Security Grant Program (HSGP) (20HSGP), passed through the following entities: Washington State Military Department and Whatcom County.

The purpose of this agreement is to enhance cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and federal, state, local, tribal, and territorial, law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors along the Canadian and international water borders.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

IT IS, THEREFORE, MUTUALLY AGREED THAT:

SPECIAL TERMS AND CONDITIONS

Statement of Work

The **WDFW** shall enhance border security through operational overtime and equipment purchases, as detailed in Attachment A – Statement of Work, Attachment D – Homeland Security Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office, and DHS-FEMA approved OPSG Operations Orders.

Period of Performance

Subject to its other provisions and regardless of the date this agreement is signed, the period of performance of this Agreement shall commence on January 1, 2021 and be completed by December 31, 2022 unless terminated sooner as provided herein.

In Consideration Whereof

The maximum amount of this Agreement allocated to the **WDFW** is **\$27,335.00** subject to the detailed budget as described in Attachment B – Budget. This is a fixed price, reimbursement agreement. Within the total Agreement amount, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

Billing Procedure

See Attachment B and Attachment C

Agency Representatives

The individuals listed below, or their successors, represent the parties in matters involving this Agreement:

For the County

Doug Chadwick, Undersheriff
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
Telephone: (360) 778-6618
Email: dchadwick@whatcomcounty.us

For the WDFW

Jeff Hugdahl, Contracts and Purchasing Manager
WDFW – BSP – 5th Floor
111 Washington Street SE
Olympia, WA 98501
360-902-2200
Email: jeff.hugdahl@dfw.wa.gov

GENERAL TERMS AND CONDITIONS

1. Administrative and/or Financial Requirements

The **WDFW** shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program" document, the DHS Award Letter for Grant #EMW-2020-SS-00080 in Attachment #1 of Attachment D, and the federal regulations commonly applicable to DHS/FEMA grants.

The **WDFW** shall comply with all administrative and cost principle requirements in 2 CFR 200, OMB Guidance, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

The **WDFW** shall comply with all federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, nondiscrimination laws and/or policies; the Americans with Disabilities Act (ADA); Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 CFR Sec. 52.203-5); Public Disclosure (RCW 42.17); safety and health regulations; and Chapter 49.60 RCW.

2. Single Audit Act Requirements

Non-federal entities, as subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR

Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR part 200.425

The **WDFW** shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The **WDFW** is responsible for any audit exceptions incurred by its own organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The **WDFW** must respond to the County requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the **WDFW** all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the **WDFW** must send a full copy of the audit and its corrective action plan to the County at the following address no later than nine (9) months after the end of the **WDFW's** fiscal year(s):

Whatcom County Sheriff's Office
Attention: Donna Duling, Financial Accountant
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225

The City must send a completed "2 CFR part 200 Subpart F Audit Certification Form" (<https://www.mil.wa.gov/emergency-management-division/grants/requiredgrantforms>) to the County at the address listed above before this Agreement is executed and timely submit annual updates to the County every year thereafter, and if the **WDFW** claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the **WDFW** must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than six (6) months after the end of the **WDFW's** fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the City's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

3. Certification Regarding Federal Supplanting Policy

The **WDFW** certifies, by submission of this proposal or contract, that the **WDFW** shall use these federal funds to supplement existing funds for program activities and shall not supplant funds that have been appropriated for the same purpose. The **WDFW** may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

4. Certification Regarding NIMS Compliance

The **WDFW** certifies, by submission of this proposal or contract, that the **WDFW** has met all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance.

5. Certification Regarding Restrictions on Lobbying

As required by 44 CFR Part 18, the **WDFW** hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the **WDFW** to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the **WDFW** will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the **WDFW** will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

6. Certification Regarding Debarment, Suspension, or Ineligibility

The **WDFW** certifies, by submission of this proposal or contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Further, the **WDFW** agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The **WDFW** certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the **WDFW** may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The **WDFW** also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" located at: <https://secure.lni.wa.gov/debarandstrike/ContractorStrikeList.aspx> The **WDFW** also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List located at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx> The **WDFW** agrees to include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

7. Procurement

The **WDFW** shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.10 Contracting & Procurement of Attachment D.

8. Equipment and Supply Acquisition

The **WDFW** may purchase approved equipment and supplies, in accordance with Attachment A – Statement of Work, Attachment B – Budget, and the current DHS-FEMA approved OPSG Operations Order, and request reimbursement from the County. The **WDFW** shall purchase the equipment and supplies according to its jurisdiction's procurement regulations, provided that the regulations conform to the requirements contained in the Grant Agreement between Washington State Military Department and the County, Attachment D, Exhibit A, Article II - Administrative and/or Financial Requirements.

9. Post-Award Requirements for Equipment and Supply Management

For the duration of the life of any Equipment provided by this Agreement:

The **WDFW** shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies as outlined in Attachment D, Article II, Section A, Number 4 Equipment and Supply Management.

The **WDFW** is solely responsible for ensuring items purchased under this Agreement are on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list> and identified as allowable under HSGP.

If the item is not identified on the AEL as allowable under HSGP, the **WDFW** must contact the County for assistance in seeking FEMA approval prior to acquisition.

Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

The **WDFW** shall provide such information to the County as specified above on request.

10. Conflict of Interest

No member, officer, or employee of the **WDFW** or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the **WDFW** who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

11. Access to Financial Records

All records and financial statements of the **WDFW**, pertaining to the expenses claimed, shall be available to the County or other pass-through entities and auditors as necessary, for the purposes of determining compliance by the **WDFW** with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.

The **WDFW** shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

12. Integrated Planning Team Operations Committee

An Operations Committee shall be established as part of the Integrated Planning Team. This committee is established so that activities, officer availability, intelligence, trends, coverage areas, and USBP requirements can be synthesized into an overall operational plan for maximum benefit and on-going assessment of the OPSG program in Whatcom County. The Operations Committee should meet at least quarterly.

This committee will consist of one member from each participating agency. The Sheriff's Office will designate one member to serve as the committee chair in order to provide team oversight and ensure that USBP requirements are satisfied. The **WDFW** will designate one member to coordinate scheduling of all operational overtime patrols with the Sheriff's Office representative. The **WDFW's** designee should be an individual who is directly involved in the deployment and reporting of OPSG patrols.

13. Right to Recover

Should the **WDFW** violate the requirements listed in this Agreement, the State of Washington reserves the right to recover any Equipment or funds transferred to the **WDFW** through this Agreement.

14. Save Harmless and Indemnification

To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

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

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

15. Disputes

The parties shall make every effort to resolve disputes arising out of or relating to this agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this agreement, the parties shall select a dispute resolution panel to resolve the dispute. The panel shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The panel shall attempt, by majority vote, to resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member. Both parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

16. 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.

17. Termination of Contract

If, through any cause, the **WDFW** fails to fulfill in a timely and proper manner its obligations under this Agreement or if the **WDFW** violates any of the stipulations of this contract, the County shall thereupon have the right to terminate this Agreement and withhold any remaining allocation, if such default is not corrected within thirty (30) days after submitting written notice to the **WDFW** describing such default or violation. Otherwise, either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

Reimbursement for services performed by the **WDFW** and not otherwise paid for by the County prior to the effective date of termination, shall be as the County reasonably determines. The County reserves the right to terminate all or part of this contract, or may reduce its scope of work and budget, if there is a reduction in funding from the source of these grant funds, provided that such funds are the basis for this contract.

The County may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

18. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19. 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.

The Special Terms and Conditions, General Terms and Conditions, the Statement of Work in Attachment A, the Budget in Attachment B, the Grant Agreement between Washington State Military Department and Whatcom County Sheriff's Office (Whatcom County Contract No. 202104016) as

STATEMENT OF WORK

Introduction: Through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), the FFY2020 Operation Stonegarden Program is providing funds to enhance law enforcement preparedness and operational readiness along international borders of the United States.

State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Participating agencies will not enforce Title 8 (U.S. Immigration Law).

The WDFW agrees to the following:

1. Work closely with local, state, and federal law enforcement agencies to develop Operations Orders.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the evaluated and DHS-FEMA approved OPSG Operations Order and all revisions thereto.
3. Plan and implement activities in accordance with the FFY20 Homeland Security Grant Program Guidance, which can be found at:
[Homeland Security Grant - Notices of Funding Opportunity | FEMA.gov](#)
4. Within 48 hours following the conclusion of each overtime shift, complete an OPSG Daily Activity Report (DAR) and submit it via the applicable reporting system.
5. Submit at a maximum monthly and at minimum quarterly, signed and approved reimbursement requests with supporting documentation to the County for costs incurred.
6. If purchasing equipment, the Contractor must meet the following requirements:
 - a. Equipment must be directly related to the enhancement of border security associated with law enforcement activities and in compliance with the FEMA Authorized Equipment List (AEL).
 - b. Ensure that vendors have not been suspended or debarred from doing business with the federal government by searching records on the System for Award Management, which can be found at <https://www.sam.gov>.
 - c. Purchases must be in accordance with the current DHS-FEMA approved OPSG Operations Order.
 - d. Purchases must also be in accordance with purchasing requirements as specified in the general terms and conditions of this contract.

The County agrees to the following:

1. Provide technical assistance, expertise, and coordination with Washington State where necessary.

BUDGET**Budget and Source of Funding:**

Expenditures may occur within the categories listed below. Changes between categories are allowed without prior approval from the County if approved in subsequent Operations Orders. Changes to the overall budget in excess of this award require prior written approval from the County.

The **WDFW** is responsible for all costs exceeding the award amount of **\$27,335.00**

Federal grant program requirements affirm that federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

Budget: The budget for this cost reimbursement contract is as follows:

Line Item	Documentation Required with Invoice	Budget
Operational Overtime	<ul style="list-style-type: none"> OPSG Reimbursement Form (Attachment C) 	21,452.10
Mileage Reimbursement/ Vessel Fuel Costs	<ul style="list-style-type: none"> OPSG Reimbursement Form including: <ul style="list-style-type: none"> Starting and ending miles Mileage will be billed at the current IRS rate available at www.gsa.gov/portal/category/104715 Fuel receipts 	5,882.90
Equipment	<ul style="list-style-type: none"> Copy of invoice from vendor including authorized signature and date equipment was received Documentation that applicable tax was remitted to WA State DOR if not on vendor's invoice A copy of the SAM search of vendor 	0.00
TOTAL		\$27,335.00

Invoicing:

- The **WDFW** shall submit itemized invoices in a format approved by the County. Invoices must be submitted no more frequently than monthly, but at least quarterly. Invoices submitted for payment must include the items identified in the table above.
- The **WDFW** shall submit invoices to SheriffAccounting@co.whatcom.wa.us
Or
Attention: Accounts Payable
Whatcom County Sheriff's Office
Public Safety Building
311 Grand Avenue
Bellingham, WA 98225-4038
- No cost for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the **WDFW** and invoiced by the vendor.
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from **WDFW**. The County may withhold payment of an invoice if the **WDFW** submits it more than 30 days after the expiration of the contract.
- Final invoice for reimbursement of costs must be submitted to the County by January 17, 2023.

OPSG REIMBURSEMENT FORM

Agency:

Date Range:

OPSG FY:

[illegible]

Attachment D

**Washington State Military Department
HOMELAND SECURITY GRANT PROGRAM AGREEMENT FACE SHEET**

1 Subrecipient Name and Address Whatcom County Sheriff's Office 311 Grand Avenue Bellingham, WA 98225-4048		2 Grant Agreement Amount \$405,600		3 Grant Agreement Number E21-199							
4 Subrecipient Contact phone/email Doug Chadwick, 360-778-6618 dchadwic@co.whatcom.wa.us		5 Grant Agreement Start Date September 1, 2020		6 Grant Agreement End Date March 31, 2023							
7 Department Contact phone/email Zoie Choate, 253-512-7461 zoie.choate@mil.wa.gov		8 Data Universal Numbering System (DUNS) 060044641		9 UBI # (state revenue) 600-358-208							
10 Funding Authority Washington State Military Department (the Department) and the U.S. Department of Homeland Security (DHS)											
11 Federal Funding Identification # EMW-2020-SS-00080		12 Federal Award Date 08/25/2020		13 Assistance Listings # (formerly CFDA) # & Title 97.067 - 20HSGP (OPSG)							
14 Total Federal Award Amount \$15,657,838.00		15 Program Index # & OBJ/SUB-OBJ 703GA, 703GB, 703GF, 703GZ		16 EIN 91-6001383							
17 Service Districts BY LEGISLATIVE DISTRICTS 40,42 BY CONGRESSIONAL DISTRICTS 1 2		18 Service Area by County(ies) Whatcom		19 Women/Minority-Owned State Certified <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES OMWBE #							
20 Agreement Classification <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Govt <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other			21 Contract Type (check all that apply) <input type="checkbox"/> Contract <input type="checkbox"/> Grant <input type="checkbox"/> Agreement <input checked="" type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency								
22 Subrecipient Selection Process <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Sole Source <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A			23 Subrecipient Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER								
<p>24 PURPOSE & DESCRIPTION</p> <p>The objective of the Federal Fiscal Year (FFY) 2020 Homeland Security Grant Program (20HSGP) is to fund state, local, tribal, and territorial efforts to prevent terrorism and prepare the nation for threats and hazards that pose the greatest risk to the security of the United States. 20HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. 20HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration.</p> <p>The Department is the Recipient and Pass-through Entity of the 20HSGP DHS Award Letter for Grant No. EMW-2020-SS-00080, which is incorporated in and attached hereto as Attachment C and has made a subaward of funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement.</p> <p>IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated, and have executed this Agreement as of the date below. This Agreement Face Sheet, Special Terms & Conditions (Attachment A), General Terms and Conditions (Attachment B), DHS Award Letter (Attachment C), Work Plan (Attachment D), Budget (Attachment E), Timeline (Attachment F), and all other documents and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.</p> <p>In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:</p> <table style="width:100%;"> <tr> <td>1. Applicable federal and state statutes and regulations</td> <td>4. Special Terms and Conditions</td> </tr> <tr> <td>2. DHS/FFMA Award and program documents</td> <td>5. General Terms and Conditions, and</td> </tr> <tr> <td>3. Work Plan, Timeline, and Budget</td> <td>6. Other provisions of the Agreement incorporated by reference</td> </tr> </table>						1. Applicable federal and state statutes and regulations	4. Special Terms and Conditions	2. DHS/FFMA Award and program documents	5. General Terms and Conditions, and	3. Work Plan, Timeline, and Budget	6. Other provisions of the Agreement incorporated by reference
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2. DHS/FFMA Award and program documents	5. General Terms and Conditions, and										
3. Work Plan, Timeline, and Budget	6. Other provisions of the Agreement incorporated by reference										
<p>WHEREAS, the parties have executed this Agreement on the day and year last specified below:</p> <table style="width:100%;"> <tr> <td style="width:50%; vertical-align: top;"> <p>FOR THE DEPARTMENT</p> <p> 5/11/2021 Signature _____ Date _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department</p> <p>BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08-11-2020)</p> </td> <td style="width:50%; vertical-align: top;"> <p>FOR THE SUBRECIPIENT</p> <p> Signature _____ Date _____ Satpal Singh Sidhu, County Executive Whatcom County</p> <p> Signature _____ Date _____ Bill Elio, Sheriff Whatcom County</p> <p>APPROVED AS TO FORM (if applicable)  Applicant's Legal Review _____ Date _____</p> </td> </tr> </table>						<p>FOR THE DEPARTMENT</p> <p> 5/11/2021 Signature _____ Date _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department</p> <p>BOILERPLATE APPROVED TO FORM Dawn C. Cortez Assistant Attorney General (08-11-2020)</p>	<p>FOR THE SUBRECIPIENT</p> <p> Signature _____ Date _____ Satpal Singh Sidhu, County Executive Whatcom County</p> <p> Signature _____ Date _____ Bill Elio, Sheriff Whatcom County</p> <p>APPROVED AS TO FORM (if applicable)  Applicant's Legal Review _____ Date _____</p>				
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SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	Doug Chadwick	Name	Zoie Choate
Title	Undersheriff	Title	Program Coordinator
E-Mail	dchadwic@co.whatcom.wa.us	E-Mail	zoie.choate@mil.wa.gov
Phone	360-778-6618	Phone	253-512-7461
Name	Dawn Pierce	Name	Gail Cram
Title	Sr. Administrative Assistant	Title	Program Manager
E-Mail	dpierce@co.whatcom.wa.us	E-Mail	gail.cram@mil.wa.gov
Phone	360-778-6606	Phone	253-512-7472
Name	Donna Duling	Name	
Title	Financial Accountant	Title	
E-Mail	dduling@co.whatcom.wa.us	E-Mail	
Phone	360-778-6611	Phone	

ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-SS-00080, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The DHS Award Letter is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the state of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. If the Subrecipient also becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient, the Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 20HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 20HSGP funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 20HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of "The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP)" document, the FEMA Preparedness Grants Manual document, the DHS Award Letter for Grant No. EMW-2020-

SS-00080 in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 20HSGP federal award funds provided to its subrecipients are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.

2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount (Agreement Face Sheet, Box #2), travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the Department Key Personnel. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the Department or charge a de minimis rate of ten percent (10%) of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate but must not exceed the approved negotiated indirect cost rate percentage for the time period of the expenditures. If a Subrecipient chooses to charge the ten percent (10%) de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the Department's Key Personnel for approval with an explanation for the change.
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without prior written approval by Department Key Personnel.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to Reimbursements@mil.wa.gov no later than the due dates listed within the Timeline (Attachment F).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.

- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention requirements of this Agreement and be made available upon request by the Department, and federal, state, and local auditors.
- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment F) and, once approved, submit those costs on the next scheduled reimbursement due date contained in the Timeline. Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel sufficiently in advance of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.

- h. All work under this Agreement must end on or before the Grant Agreement End Date (Agreement Face Sheet, Box #6), and the final reimbursement request must be submitted to the Department within forty-five (45) days after the Grant Agreement End Date, except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's subproject(s).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline [Attachment F]) will prohibit the Subrecipient from being reimbursed until such reports are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. For SHSP and UASI Subrecipients, a written amendment will be required if the Subrecipient expects cumulative transfers among subproject totals, as identified in the Budget (Attachment E), to exceed ten percent (10%) of the Grant Agreement Amount. If a Subrecipient has only one subproject, cumulative transfers among solution areas within the subproject that exceed ten percent (10%) of the Grant Agreement Amount shall require an amendment to this Agreement.
- m. For OPSG Subrecipients, any deviations from the approved budget categories will require additional federal approvals and a written amendment.
- n. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

3. REPORTING

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachments D-1, D-2, D-3), activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report describing all completed activities under this Agreement.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the *Department an Audit Certification/FFATA Form*. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- d. SHSP Subrecipients must participate in the State's Stakeholder Preparedness Review (SPR), the State's Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls.
- e. UASI Subrecipients must participate in the UASI SPR and THIRA process.

4. EQUIPMENT AND SUPPLY MANAGEMENT

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326 when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract,

subrecipient grant agreement, or other means of legal transfer of ownership is in place.

- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
 - A. Description of the property;
 - B. Manufacturer's serial number, model number, or other identification number;
 - C. Funding source for the equipment, including the Federal Award Identification Number (FAIN);
 - D. Assistance Listings Number (formerly CFDA number);
 - E. Who holds the title;
 - F. Acquisition date;
 - G. Cost of the equipment and the percentage of federal participation in the cost;
 - H. Location, use and condition of the equipment at the date the information was reported;
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well-maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
 - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1) Items with a current per-unit fair-market value of five thousand dollars (\$5,000) or less may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2) Items with a current per-unit fair-market value in excess of five thousand dollars (\$5,000) may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the Subrecipient for a period of six (6) years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six- (6-) year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable categories for 20HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at <http://www.fema.gov/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. For OPSG Subrecipients, equipment purchased with DHS federal award funds is to be marked prominently with "Purchased with DHS funds for Operation Stonegarden Use" when practicable.
- f. The Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

5. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. EHP program information can be found at <https://www.fema.gov/environmental-planning-and-historic-preservation-compliance> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, including, **but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; or new construction, including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.
- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that, to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before** any work is started for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient may not be reimbursed.

6. PROCUREMENT

- a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Attachment B, A.10.
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must

be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement Work Plan (Attachments D-1, D-2, D-3), Budget (Attachment E), and federal requirements;
 - v. Observation and documentation of Agreement-related activities, such as exercises, training, events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a corrective action plan.

8. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

9. NIMS COMPLIANCE

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive FY 2020 federal preparedness funding, to include 20HSGP, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at <https://www.fema.gov/media-library/assets/documents/130743>.

B. HSGP SPECIFIC REQUIREMENTS

1. The Subrecipient must use HSGP funds only to perform tasks as described in the Work Plan (Attachments D-1, D-2, D-3), as approved by the Department, and in compliance with this Agreement.
 - a. SHSP-funded projects must assist state, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - b. UASI-funded projects must assist high-threat, high-density Urban Areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - c. OPSG-funded projects must enhance cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, tribal, and territorial law enforcement agencies to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - d. State agencies, including law enforcement, must comply with RCW 43.17.425 and may not use agency funds (including this grant), facilities, property, equipment, or personnel, to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration or surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration, or citizenship status, or national or ethnic origin, except as provided in RCW 43.17.425 (3).
2. The Budget (Attachment E) may include the following caps and thresholds:
 - a. If funds are allotted for Management and Administration (M&A), such expenditures must be related to administration of the grant. The maximum percentage of the Grant Agreement Amount that may be used for M&A costs when allocated under this Agreement shall not exceed five percent (5%) but may be less.
 - b. At least twenty-five percent (25%) of the combined HSGP award allocated under SHSP and UASI must be dedicated to law enforcement terrorism prevention activities (LETPA). To meet this requirement, the Subrecipient has agreed, at a minimum, to meet the LETPA percentage indicated in the Budget. If the Subrecipient anticipates spending less than the indicated amount, a budget amendment is required.

- c. The maximum percentage of the Grant Agreement Amount that may be used for personnel expenses under this Agreement is identified in the Budget. If the Subrecipient anticipates spending more on personnel costs, an amendment is required. Additional approval steps may also be required before the personnel percentage can be increased.
- 3. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

Prohibitions on Expending Grant or Cooperative Agreement Funds for Certain Telecommunications and Video Surveillance Services or Equipment: Effective August 13, 2020, DHS/FEMA recipients and subrecipients may not use grant funds under the programs covered by this Manual and provided in FY 2020 or previous years to:

- a. Procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain any equipment, system, or service that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology of any system; or
- b. Enter into contracts or extend or renew contracts with entities that use "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of this Manual, applicable appendix to this Manual, and applicable NOFO. DHS/FEMA will publish additional guidance in a subsequent Information Bulletin or similar notice.

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - b. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
- 4. If funding is allocated to a Fusion Center investment, the Subrecipient must ensure all Fusion Center analytical personnel demonstrate qualifications that meet or exceed competencies identified in the Common Competencies for state, local, and tribal Intelligence Analysts, which outlines the minimum categories of training needed for intelligence analysts. All training to ensure baseline proficiency in intelligence analysis and production must be completed within six (6) months of hiring unless the analyst has previously served as an intelligence analyst for a minimum of two (2) years. Proof of satisfaction of this requirement must be accessible to the Department Key Personnel as applicable.
 - 5. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Policy FP 207-008-064-1, the training must fall within the FEMA mission scope and be

included in the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to countering violent extremism prior to attendance.

6. For SHSP and UASI, Subrecipients are required to complete the annual Nationwide Cybersecurity Review (NCSR) <https://www.cisecurity.org/ms-isac/services/ncsr> to benchmark and measure progress of improvement in their cybersecurity posture.
7. In support of efforts to enhance capabilities for detecting, deterring, disrupting, and preventing acts of terrorism and other catastrophic events, operational overtime costs are allowable for increased protective security measures at critical infrastructure sites or other high-risk locations and to enhance public safety during mass gatherings and high-profile events. However, except for an elevated National Terrorism Advisory System alert, **prior** written approval is required before SHSP and UASI funds may be used for operational overtime. Requests must be submitted to the Department Key Personnel in advance of the expenditure to ensure all additional approval steps can be met.
8. Subrecipients should document their preparedness priorities and use them to deploy a schedule of preparedness events in a multi-year Training and Exercise Plan (TEP) or an Integrated Preparedness Plan (IPP). Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW)/Integrated Preparedness Planning Workshop (IPPW) or may conduct their own local/regional TEPW/IPPW. Information related to TEPs and Training and Exercise Planning Workshops (TEPWs), as well as information about IPPs and Integrated Preparedness Planning Workshops (IPPWs), can be found on the HSEEP website at <https://www.fema.gov/HSEEP> and <https://preptoolkit.fema.gov/>.

C. DHS TERMS AND CONDITIONS

As a subrecipient of 20HSGP program funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 20HSGP Award Letter and its incorporated documents for DHS Grant No. EMW-2020-SS-00080, which are incorporated in and made a part of this Agreement as Attachment C.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. **"Stakeholders Preparedness Report (SPR)"** The SPR is an annual three-step self-assessment of a community's capability levels based on the capability targets identified in the THIRA.
- f. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.93 for all other purposes.
- g. **"Threat and Hazard Identification and Risk Assessment (THIRA)"** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community's capability gaps during the SPR process.

A.2 ADVANCE PAYMENTS PROHIBITED

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

A.3 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Subrecipient 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 telecommunication.

A.5 ASSURANCES

The Department and Subrecipient 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.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to Subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' "Debarred Vendor List" (<http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58),

State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
 - 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
 - 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - 14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.
 - 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
 - 16) Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the Department encourages Subrecipients to use, to the greatest extent practicable and consistent with the law, the use of goods, products, and materials produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- b. The Department reserves the right to review the Subrecipient's procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA, is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Department makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the

grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office
Washington Military Department**

**Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the Department by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Agreement.

A.30 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice to the Subrecipient. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;

- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

A 35 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

A 36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

A 37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the Department in writing. The Department's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**FFY20HSGP Award Documents
EMW-2020-SS-00080**

Award Letter



U.S. Department of Homeland Security
Washington, D.C. 20472

Bret Daugherty
Washington Military Department
Building 20
Camp Murray, WA 98430 - 5122

Re: Grant No EMW-2020-SS-00080

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2020 Homeland Security Grant Program has been approved in the amount of \$15,667,338.00. You are not required to match this award with any amount of non-Federal funds.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2020 Homeland Security Grant Program Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, DUNS number, EIN and banking information. Please ensure that the DUNS number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM, therefore, it is imperative that the information is correct. The System for Award Management is located at <https://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a small dot.

CHRISTOPHER PATRICK LOGAN GPD Assistant Administrator



AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE: Washington Military Department
PROGRAM: Homeland Security Grant Program
AGREEMENT NUMBER: EMW-2020-SS-00080-S01

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Article I - Summary Description of Award

The purpose of the FY 2020 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience.

The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government organization or community, but rather, require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of \$6,731,000, Urban Area Security Initiative (UASI) funding in the amount of \$6,250,000, and Operation Stonegarden (OPSG) funding in the amount of \$2,676,838. The following counties shall receive Operation Stonegarden subawards for the following amounts: Adams, \$75,000; Clallam, \$455,000; Ferry, \$130,000; Island, \$208,386; Jamestown-Skallam Tribe, \$80,000; Lower Elwha Tribe, \$75,000; Makah, \$77,018; Nooksack, \$110,262; Okanogan, \$250,000; Pend Oreille, \$155,232; Quileute, \$74,825; San Juan, \$165,750; Spokane, \$155,250; Stevens, \$175,000; Swinomish, \$74,115; Whatcom, \$416,000. These grant programs fund a range of activities including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Article II - Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article III - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article IV - Trafficking Victims Protection Act of 2000 (TVPA)

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article V - Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

Article VI - Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article VII - Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article VIII - Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101-12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX - Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article X - Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XI - Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.) as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units (i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)) be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments, Privacy Guidance and Privacy Template as useful resources respectively.

Article XIII - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable

steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published/help-department-supported-organizations-provide-meaningful-access-people-english> and additional resources on <http://www.lep.gov>.

Article XIV - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. section 2225.)

Article XV - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. Section 200.313.

Article XVI - Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XVII - DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years as long as they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.
6. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article XVIII - Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection

Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article XIX - Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article XX - Civil Rights Act of 1964 - Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XXI - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. Section 200.308. DHS/FEMA is also utilizing its discretion to impose an additional restriction under 2 C.F.R. Section 200.308(e) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the Federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXII - Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article XXIII - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK_GMD@fema.dhs.gov if you have any questions.

Article XXIV - Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. section 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXV - False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XXVI - Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVII - Lobbying Prohibitions

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVIII - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXIX - Age Discrimination Act of 1975

Recipients must comply with the requirements of the Age Discrimination Act of 1975 (Pub. L. No. 94-135 (1975) (codified as amended at Title 42 U.S.C. section 6101 et seq.)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

Article XXX - National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.)) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXXI - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances - Non-Construction Programs, or OMB Standard Form 424D Assurances - Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article XXXII - USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c).

Article XXXIII - Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXXIV - Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XXXV - Universal Identifier and System of Award Management

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C F R Part 25 Appendix A the full text of which is incorporated here by reference

Article XXXVI - Reporting Subawards and Executive Compensation

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C F R Part 170 Appendix A the full text of which is incorporated here by reference in the award terms and conditions

Article XXXVII - Energy Policy and Conservation Act

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94- 163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act

Article XXXVIII - Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409 41 U.S.C. section 4712 and 10 U.S.C. section 2324 41 U.S.C. sections 4304 and 4310

Article XXXIX - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XL - Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article XLI - Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

Article XLII - SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants including provisions on technical standards that ensure and enhance interoperable communications.

Article XLIII - Operation Stonegarden Program Hold

The recipient is prohibited from drawing down OPSG funding under this award or reimbursing OPSG subrecipients of this award until each unique, specific, or modified county level, tribal, or equivalent Operations Order or Fragmentary Order (Frago) has been reviewed by FEMA/GPD and Customs and Border Protection/United States Border Patrol (CBP/USBP). The recipient will receive the official notification of approval from FEMA/GPD.

Article XLIV - Funding Hold: SHSP National Priorities

FEMA has placed a funding hold on the following investments under the national priority areas, and \$1,346,200 of SHSP funds is on hold in the FEMA financial systems. Until the hold is released, the recipient is prohibited from drawing down funds or reimbursing subrecipients for, and the subrecipients are prohibited from obligating or expending SHSP funds for the costs or activities identified below. The hold only applies to the amount of funds identified for each SHSP investment under the national priority areas below. To release this hold, additional information is required for the investments identified below which must be submitted in the December 2020 Biannual Strategy Implementation Report (BSIR) in a manner consistent with GPD Information Bulletin No. 447.

Cybersecurity \$336,550
Soft Targets/Crowded Places \$336,550

Information Sharing and Cooperation \$336 550
Emerging Threats \$336 550

If you have questions about this funding hold or believe it was placed in error, please contact the DHS/FEMA Headquarters Preparedness Officer

BUDGET COST CATEGORIES

Personnel	\$466 958 85
Fringe Benefits	\$140 087 45
Travel	\$14 076 00
Equipment	\$0 00
Supplies	\$9 134 00
Contractual	\$14,941 867 04
Construction	\$0 00
Indirect Charges	\$85 714 66
Other	\$0 00

Obligating Document for Award/Amendment

1a. AGREEMENT NO. EMW-2020-SS-00080-S01	2. AMENDMENT NO. ***	3. RECIPIENT NO. 916001095G	4. TYPE OF ACTION AWARD	5. CONTROL NO. WX03438N2020T WX03434N2020T WX03435N2020T
6. RECIPIENT NAME AND ADDRESS Washington Military Department Building 20 Camp Murray, WA. 98430 - 5122	7. ISSUING FEMA OFFICE AND ADDRESS FEMA-GPD 400 C Street, SW, 3rd floor Washington, DC 20472-3645 POC: 866-927-5646	8. PAYMENT OFFICE AND ADDRESS FEMA Finance Center 430 Market Street Winchester, VA 22603		
9. NAME OF RECIPIENT PROJECT OFFICER Gail Cram	PHONE NO. 253-512-7472	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askesid@dhs.gov		
11. EFFECTIVE DATE OF THIS ACTION 09/01/2020	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement	14. PERFORMANCE PERIOD From: 09/01/2020 To: 08/31/2023 Budget Period 09/01/2020 08/31/2023	

1.5 DESCRIPTION OF ACTION
a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XX-XXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION * OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Homeland Security Grant Program	97-067	2020-FA-GG02-P410-4101-D	\$0.00	\$2,676,838.00	\$2,676,838.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GG01-P410-4101-D	\$0.00	\$6,731,000.00	\$6,731,000.00	See Totals
Homeland Security Grant Program	97-067	2020-FA-GH01-P410-4101-D	\$0.00	\$6,250,000.00	\$6,250,000.00	See Totals
				\$0.00	\$15,657,838.00	\$15,657,838.00
						\$0.00

b. To describe changes other than funding data or financial changes, attach schedule and check here
N/A

16 a. FOR NON-DISASTER PROGRAMS, RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address).
Homeland Security Grant Program recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b. FOR DISASTER PROGRAMS, RECIPIENT IS NOT REQUIRED TO SIGN.
This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)
Gail Cram

DATE:
Sun Sep 13 19:38:31 GMT 2020

18. FEMA SIGNATORY OFFICIAL (Name and Title)

DATE:
Tue Aug 25 18:08:42 GMT 2020



SHENAUZ SUBRINA WONG, Assistance Officer

WORK PLAN**FFY20 Homeland Security Grant Program (HSGP)
Operation Stonegarden (OPSG)**

The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress/egress to and from international borders, to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. State, local, tribal, and territorial (SLTT) law enforcement agencies utilize their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.

Per the FY20 Preparedness Grants Manual, responsibilities of the Subrecipient include:

- Conduct operations on an as-needed basis throughout the length of the grant performance period;
- Integrate law enforcement partners from contiguous counties and towns into their tactical operations to expand the layer of security beyond existing areas;
- Ensure all required reports, including reports from friendly forces, are submitted to Border Patrol and the State Administrative Agency (SAA), when applicable, in the proper format and within established timeframes;
- Ensure applicable OPSG derived data and applicable intelligence is shared with the designated fusion center in the state or high-risk urban areas;
- Request instruction and information from the SAA, when applicable, and/or Border Patrol and other Federal law enforcement agencies regarding techniques, methods, and trends used by transnational criminal organizations in the area;
- Provide the SAA and Border Patrol a single point of contact that maintains subject-matter expertise in OPSG who can coordinate, collect, and report operational activities within the established reporting procedures; and
- Assist as required with the coordination, management, and operational aspects of the grant.

Attachment E includes the Budget.

The Budget consists of the 20OPSG Operation Order Approval Letter and the Personnel Cap Waiver Approval Letter addressed to Adjutant General Daugherty on behalf of the Subrecipient.

- Personnel expenditures will not exceed 50% of the agreement award unless a waiver has been approved by FEMA. Once a Personnel Cap Waiver Approval Letter is received, the Subrecipient will be held to the personnel amount indicated in the letter. Expenditures above the approved amount will not be reimbursed unless and only after a revised approval letter is received from FEMA.
- A current approved Indirect Cost Rate Agreement must be provided to the SAA prior to requesting reimbursement of indirect costs. If the approved Indirect Cost Rate Agreement is updated, the updated Agreement must be submitted to the SAA before costs will be reimbursed.
- OPSG funds shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local, state, tribal, and Federal law enforcement agencies.
- Cumulative transfers between budget categories in excess of 10% of the Grant Agreement amount will not be reimbursed without prior written authorization from the Department. All budget modifications must be validated by USBP concurrence and any applicable approvals.

BUDGET

Attachment E

U.S. Department of Homeland Security
Washington, DC 20472**FEMA**

March 8, 2021

Bret Daugherty Adjutant
General
Washington Military Department Militia
Drive, Building 1
Camp Murray, WA 98430-5122

Based on the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) Operation Stonegarden Grant Program (OPSG) guidelines and special conditions associated with this program, the below referenced Operations Order as submitted is approved:

Operations Order No: 21-BL.WBL.W-10-008 V0**Fiscal Year:** 2020**Amount Approved:** \$416,000.00**Operations Order Dates:** 09/01/2020 to 08/31/2023**Recipient:** Whatcom County, WA

Expenditures from the Operations Order (OPORD) that were reviewed and approved by FEMA and U.S. Customs and Border Protection/Border Patrol (CBP) are outlined below. These expenses will assist the County in conducting border centric, intelligence driven operations with the goal of reduction or elimination of threat, risk and vulnerability along our Nation's borders. Please see below for all approved costs for this OPORD, and refer to the OPORD for specific items.

Category	Amount
Overtime:	\$281,135.70
Fringe:	\$44,713.65
Equipment:	\$27,769.00
Fuel:	\$14,792.90
Maintenance:	\$0
Mileage:	\$22,986.75
Travel:	\$0
County M&A:	\$14,202.00
State M&A:	\$10,400.00
Indirect Costs:	\$0
Total	\$416,000.00

Please find the below special conditions associated with OPSG and retain this letter for your grant files. If you have any questions, please feel free to contact me at (202) 802-2755.

FOR OFFICIAL USE ONLY - LAW ENFORCEMENT SENSITIVE

Sincerely,

DELROY A DOWDEN

Digitally signed by DELROY A DOWDEN
Date: 2021.05.08 10:59:19 -0500

Delroy Dowden on behalf of Lindsey Tomes
Preparedness Officer
U.S. Department of Homeland Security Federal
Emergency Management Agency
Grant Programs Directorate

Cc: U.S. Customs and Border Protection/ Border Patrol

The following Special Conditions are associated with this Operation Stonegarden award:

1. Construction and construction-type activities are prohibited.
2. Lethal or less than lethal forces including, but not limited to: weapons, firearms, ammunition and tasers are prohibited.
3. Per the *Personnel Reimbursement for Intelligence Cooperation and Enhancement (PRICE) of Homeland Security Act* (Public Law 110-412), the sum of all personnel related expenses shall not exceed 50% of the recipient's allocation without first obtaining a waiver from the FEMA Administrator.
4. All participating agencies shall monitor, review and track expenditures of OPSG funds under individual Operations Orders issued. Participating agencies shall not obligate, and/or encumber OPSG grant funds beyond the total of their allocation issued by FEMA.
5. The Operations Order has been reviewed and approved under the Environmental and Historic Preservation Program (EHP) guidelines as being categorically excluded from further EHP review.
6. Recipients must submit a letter of justification for all proposed vehicles or equipment items in excess of \$100,000. This justification will be reviewed by CBP and FEMA.

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FEMA

October 8, 2020

Bret Daugherty
Adjutant General
Washington Military Department
MS: TA-20 Building 20
Camp Murray, WA 98430-5122

Dear Adjutant General Daugherty:

The Federal Emergency Management Agency (FEMA) has reviewed the request submitted by Washington Military Department (WMD) to waive the 50 percent Personnel Cap imposed by Section 2008 of the *Homeland Security Act of 2002*, Public Law 107-296, as amended (6 U.S.C. § 609). WMD is retaining 2.5 percent for M&A at \$66,920.95. The following counties have requested to expend up to 85 percent of their total FY 2020 Operation Stonegarden allocations, award number EMW-2020-SS-00080, on operational overtime and related personnel costs.

County	FY 2020 OPSG Allocation	85% PCAP Maximum
Adams	\$75,000.00	\$63,750.00
Clallam	\$455,000.00	\$386,750.00
Ferry	\$130,000.00	\$110,500.00
Island	\$208,386.00	\$177,128.10
Jamestown Sklallam Tribe	\$80,000.00	\$68,000.00
Lower Elwha Tribe	\$75,000.00	\$63,750.00
Makah	\$77,018.00	\$65,465.30
Nooksack	\$110,262.00	\$93,722.70
Okanogan	\$250,000.00	\$212,500.00
Pend Oreille	\$155,232.00	\$131,947.20
Quileute	\$74,825.00	\$63,601.25
San Juan	\$165,750.00	\$140,887.50
Spokane	\$155,250.00	\$131,962.50
Stevens	\$175,000.00	\$148,750.00
Swinomish	\$74,115.00	\$62,997.75
Whatcom	\$416,000.00	\$353,600.00
Total	\$2,676,838.00	\$2,275,312.30

This request is consistent with the terms and conditions of the grant award and is necessary for the continued success of border security operations. This request is therefore approved pursuant to the waiver authority provided by 6 U.S.C § 609(b)(2)(B).

As a reminder, if any subrecipient's approved or initial revised budget will exceed 85 percent in personnel costs, they are required to submit a waiver request as described in section III.C.3 of Information Bulletin 421b. Please contact your Preparedness Officer, Lindsey Tomes, at lindsey.tomes@fema.dhs.gov if you have any questions.

Sincerely,

Stacey N. Street
Director
Office of Grants Administration

Cc : Mike O'Hare, Regional Administrator, Region X
Kerry L. Thomas, Director, Preparedness Grants Division
Patrick Marcham, Grants Division Director, Region X
Virginia Warren, Deputy Director, Preparedness Grants Division
Alexander R. Mrazik, Jr., Branch Chief, Preparedness Grants Division
Kimberley Marshall, Section Chief, Preparedness Grants Division
Lindsey Tomes, Preparedness Officer, Preparedness Grants Division

**Whatcom County Sheriff's Office
20OPSG Timeline**

Date	Task
September 1, 2020	Grant Agreement Start Date
March 8, 2021	Operations Order approved by FEMA
October 1, 2021	Estimated date work will begin
NLT January 31, 2022	Submit Reimbursement Request
NLT April 30, 2022	Submit Reimbursement Request
NLT July 31, 2022	Submit Reimbursement Request
NLT October 31, 2022	Submit Reimbursement Request
NLT January 31, 2023	Submit Reimbursement Request
NLT February 24, 2023	In collaboration with U.S. Border Patrol, assess status of award. Determine if additional time is needed to complete operations and/or if there is a need to submit a FRAG Order changing the approved Operations Order.
March 31, 2023	Grant Agreement End Date. All work ceases.
NLT May 15, 2023	Submit Final Reimbursement Request and Closeout Report. Reports are due before final invoice will be reimbursed.

Grant Performance Period: September 1, 2020 - August 31, 2023



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-558

File ID:	AB2021-558	Version:	1	Status:	Agenda Ready
File Created:	09/20/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bennett Engineering to perform environmental monitoring and sampling of closed landfills, in the amount of \$62,683 for a total amended contract amount of \$168,517

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

HISTORY OF LEGISLATIVE FILE

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



MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Erika Lautenbach, Director

RE: Bennett Engineering – Closed Cedarville & Y-Road Landfill Monitoring Contract Amendment #3

DATE: September 20, 2021

Attached is a contract amendment between Whatcom County and Bennett Engineering for your review and signature.

■ Background and Purpose

This contract provides funding for monitoring of ground and surface water as well as gas emissions at the closed Cedarville and Y-Road landfills. Monitoring ensures that each site is compliant with Federal, State and Local laws and regulations in accordance with approved landfill post-closure plans and National Pollutant Discharge Elimination System (NPDES) and Industrial Stormwater General Permit (ISGP) permit conditions. The purpose of this amendment is to renew the contract for an additional year and update activities and deliverables necessary to fulfill the requirements of Whatcom County's National Pollutant Discharge Elimination System (NPDES) (WA0501490) Permit and Cedarville Landfill Sampling and Analysis Plan.

■ Funding Amount and Source

Funding for this contract, in an amount not to exceed \$62,683, is provided by the Solid Waste Fund. These funds will be included in the 2022 budget. Council approval is required as funding for this amendment exceeds \$40,000.

Please contact Sue Sullivan, Environmental Health Manager at 360-778-6026 (SSuliva@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.



**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
201812019 – 3

Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8540 Environmental Health / 854080 Solid Waste
Contract or Grant Administrator:	Jennifer Hayden
Contractor's / Agency Name:	Bennett Engineering

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 #:	201812019	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:	(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		

Is this a grant agreement?			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, grantor agency contract number(s):	CFDA#:	

Is this contract grant funded?		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, Whatcom County grant contract number(s):	

Is this contract the result of a RFP or Bid process?		Contract Cost Center:	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, RFP and Bid number(s): 18-50	140201	

Is this agreement excluded from E-Verify?	No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>
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If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	
<input 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):	<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.
\$ 105,834	
This Amendment Amount:	
\$ 62,683	
Total Amended Amount:	
\$ 168,517	

Summary of Scope: This contract provides funding for landfill monitoring services at closed Cedarville and Y-Road landfills.

Term of Contract:	1 Year	Expiration Date:	12/31/2022
Contract Routing:	1. Prepared by:	JT	Date: 08/23/2021
	2. Health Budget Approval	KR/JG	Date: 09/16/2021
	3. Attorney signoff:	RB	Date: 09/17/2021
	4. AS Finance reviewed:	M Caldwell	Date: 9/17/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Executive Contract Review:		Date:
	8. Council approved (if necessary):	AB2021-558	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:
Bennett Engineering
2324 James Street
Bellingham, WA 98225

CONTRACT PERIODS:

Original: 01/01/2019 – 12/31/2019
Amendment #1: 01/01/2020 – 12/31/2020
Amendment #2: 01/01/2021 – 12/31/2021
Amendment #3: 01/01/2022 – 12/31/2022

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

DESCRIPTION OF AMENDMENT:

1. Extend the duration and other terms of this contract for 1 year, as per the original contract "General Terms, Section 10.2, Extension".
2. Amend Exhibit A – Scope of Work to reflect 2022 priorities and deliverables, which includes the following:
 - a. An update to Task 1, to include semi-annual ground water sampling and landfill gas monitoring per the Sampling and Analysis Plan which requires these activities once every 5 years. This sampling and monitoring includes preparation of the Semi-Annual Report and 2022 Annual Report.
 - b. The addition of Task 5, necessary as the current National Pollutant Discharge Elimination System (NPDES) (WA0501490) Permit expires on 5/31/2023.
3. Replace Exhibit B – Compensation to reflect increased 2022 staff, equipment, and laboratory rates, and reimbursement of the additional activities indicated in #2, above.
4. Funding for this contract period (01/01/2022 – 12/31/2022) is not to exceed \$62,683.
5. Funding for the total contract period (01/01/2019 – 12/31/2022) is not to exceed \$168,517.
6. All other terms and conditions remain unchanged.
7. The effective start date of the amendment is 01/01/2022.

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: _____
Sue Sullivan, Environmental Health Manager Date

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

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

FOR THE CONTRACTOR:

Tom Bennett, P.E. – Owner		
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
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CONTRACTOR INFORMATION:

Bennett Engineering
2324 James Street
Bellingham, WA 98225
tomb@bennettengr.com

EXHIBIT "A" – Amendment #3
(SCOPE OF WORK)

I. Background

Cedarville Landfill

Cedarville has been a closed landfill since February 1990. Final closure improvements were completed in October 1993. A leachate management system was constructed in 2012, consisting of a retention pond, aeration and settling vaults, and bio-swale filtration.

All surface water and leachate sampling at the Cedarville landfill shall be in compliance with the Sampling and Analysis Plan (Cedarville SAP) dated January 2013. Included, are sampling parameters and procedures, and reporting requirements. Quarterly surface water monitoring must be conducted at the Downstream Ditch sampling location in accordance with the Cedarville SAP, the current Industrial Stormwater General Permit (ISGP #WAR001280), and the National Pollutant Discharge Elimination System (NPDES) (WA0501490) for the landfill. Discharge monitoring reports and visual inspection reports are to be prepared for each quarterly event.

Y Road Landfills

The Y Road landfills are comprised of two former landfill areas located on the west side (Y-Road I Landfill) and on the east side (Y-Road II Landfill) of Y Road in Whatcom County. All monitoring must be in compliance with the Revised Sampling and Analysis Plan (Y-Road SAP), dated October 2003 and revised in 2013. There are a total of four groundwater wells to be sampled, one surface water sampling location, and seven gas probes installed at the two sites.

The work of this contract is divided into 6 tasks as follows:

Task 1: Semi-Annual Monitoring & Reporting – Cedarville Landfill

Task 1.1 Project Management

Project management includes project scoping and setup, invoice review, and meetings and correspondence with Whatcom County staff and outside vendors.

Task 1.2 Semi-Annual Ground Water Sampling/Landfill Inspection

Semi-annual ground water sampling will be performed in accordance with the 2013 SAP. The wells will be redeveloped utilizing a down-hole purge pump prior to the April sampling event. The static water levels will be measured in all 17 monitoring wells at the site, and eleven wells will be sampled using low-flow techniques with a peristaltic pump (shallow wells MW-1, 10 and 11) or portable submersible pump (deep wells MW-2, 3, 4, 5, 6, 7, 13D, and 14D). Ground water sampling will consist of the following work items:

1. The depth to water will be measured to the nearest 0.01 foot in all monitoring wells using an electric water level indicator, and recorded in the field data sheets.
2. The 11 sampled wells will be purged at approximately 0.5 liters per minute. Purge water will be disposed on the ground adjacent to the respective wells. The water level probe will be used to monitor changes in water level during purging. The purge rate will be adjusted to minimize ground water drawdown in the well.
3. Field parameters, including electrical conductivity, pH, oxidation-reduction potential (ORP), and temperature, will be measured with field instruments during purging. Sampling will begin when these parameters have stabilized.
4. Ground water samples will be collected from the discharge stream of the pump and will be placed directly into the appropriate sample containers provided by Edge Analytical (Edge). Field parameter readings, date, time, weather conditions, and any special field observations will be recorded on field data sheets for each monitoring well.
5. Sampling equipment will be decontaminated between each well using a triple rinse technique, which includes scrubbing the equipment with a laboratory-grade detergent, and a double rinse with distilled water. Wash and rinse will be disposed on the ground at the site.
6. Sample bottles will be labeled with the date, sample location, sample depth, and sampler's name and placed into a cooler with ice or ice-substitute.
7. Duplicate, field-blank, and trip blank samples will be prepared and analyzed in accordance with the Cedarville SAP.

Visual inspection of the landfill facilities will be performed during the semi-annual events, including the following items (at a minimum):

- Landfill cover regarding vegetation and indications of erosion, seepage, or subsidence;
- Stormwater facilities regarding ponding, obstruction of ditches, and indications of erosion;
- Leachate management system with respect to general physical condition and operation.

Task 1.3 Semi-Annual Gas Monitoring

Methane gas monitoring will be conducted at gas probes GP-1, 5, 6, 7, 8 and 9, and several sampling ports in the decommissioned gas flare system during the semi-annual events.

Task 1.4 Semi-Annual Report

The Semi-Annual Report associated with the April event will include a discussion of site conditions observed during the landfill inspection, laboratory quality assurance results, water quality data, and ground water flow direction and velocity. Summary tables will be prepared for the water quality results and parameters exceeding applicable ground water (WAC 173-200) or surface water (WAC 173-201A) standards will be highlighted. A ground water contour map, field data sheets, and laboratory results will be attached to the report, along with a chain-of-custody documentation regarding sample handling. The Semi-Annual Report will be submitted electronically to the WCHD and Ecology in PDF format within 30 days of receipt of the analytical data.

Task 1.5 2022 Annual Report

The 2022 Annual Report will be prepared following the October event and will include time-series plots for conductivity, chloride, and total iron and manganese, qualitative analysis of water quality trends, summary tables of historic analytical data, and the other data as previously described for the Semi-Annual Report. The 2022 Annual Report will be submitted to the WCHD and Ecology in PDF format prior to December 31, 2022.

Task 1.6 Laboratory Analysis

Bennett will hand-deliver water samples to Edge on the day of the monitoring events. The analytical fees for Task 1 are presented in Exhibit B.

Task 2: Surface Water Monitoring – Cedarville Landfill

The scope of work for Task 2 includes quarterly site inspection, surface water sampling at the D.D. location, and reporting in accordance with the ISGP. Specifically, this task will include the work items listed below.

Task 2.1 Quarterly Sampling and Site Inspection

Stormwater monitoring and inspection will be conducted in accordance with the ISGP, which calls for quarterly observations for oil sheen, and surface water sampling and analysis of the following parameters: pH (field), turbidity, and total copper and zinc. Visual inspections are performed during the quarterly events, and include observations of uncontrolled discharges to ground, floating materials, visible sheens, discoloration, turbidity, and odor.

Task 2.2 Laboratory Testing

Bennett will deliver water samples to Edge immediately following the sampling events. The anticipated analytical fees for Task 2 are presented in Exhibit B.

Task 2.3 Quarterly Discharge Monitoring Reports and Visual Inspection Reports

Bennett will enter quarterly DMRs into Ecology's WebDMR system prior to the 15th day of the month following the respective quarter. The DMRs are reviewed and validated by County staff to complete the submittal process. The quarterly Visual Inspection Reports will be submitted to Whatcom County in PDF format, which will summarize site observations and provide a list of recommended actions, if necessary.

Task 2.4 ISGP Annual Report

Bennett will prepare the 2021 ISGP Annual Report using Ecology's standard form. The report will be submitted to Whatcom County for

review and comment prior to May 1, 2022. The final report will be submitted to Whatcom County and Ecology prior to May 15, 2022 deadline.

Task 3: NPDES Permit Sampling - Cedarville Landfill Leachate Management System

Under this task, sampling and analysis of the treated effluent and surface water samples will be performed in accordance with the NPDES Permit.

Task 3.1: NPDES Permit Sampling

Monthly sampling of the treated effluent will be performed at the discharge manhole of the effluent pond (Outfall #001). Monthly surface water samples will also be obtained in the regional drainage ditch to determine the turbidity at locations upgradient and downgradient of Outfall #001. Bennett will measure field parameters (pH, conductivity, and temperature) during each sampling event. The scope of work for this task assumes that discharge will occur during the months of January through April, November, and December 2022 (6 sampling events total).

Task 3.2: Discharge Monitoring Reports

DMRs will be entered into Ecology's WebDMR system every month (12 total), regardless of the status of system discharge. County staff will review and validate the DMRs prior to the 15th day of the month following the sampling event.

Task 3.3: Coordination of Annual O&M Work Items

Bennett will develop a list of maintenance work items for the LMS, in accordance with the O&M Manual. Bennett will provide field support and observation during the maintenance work, and submit associated field reports and photo documentation to Whatcom County following completion of the work.

Task 3.4 Laboratory Testing

Bennett will deliver the effluent samples to Edge immediately following the sampling event. The anticipated analytical fees for Task 3 are presented in Exhibit B.

Task 4: Ground Water, Surface Water, and Landfill Gas Monitoring -Y-Road Landfills

Semi-annual landfill monitoring events will be performed at the Y-Road Landfills in January and July 2022, in accordance with the current SAP. Specifically, this task will include the work items listed below.

Task 4.1: Semi-Annual Sampling and Inspection

Ground water sampling will be conducted using low-flow methods, as described below.

1. The depth to water and depth to bottom will be measured to the nearest 0.01 foot in MW-1, 3, 4, 5, 6, 7, 8, and 9 using an electric water level indicator, and recorded in the field data sheets. The bottom elevations will be compared to previous readings to determine the depth of sediment accumulation and evaluate the need for well re-development.
2. Monitoring wells MW-1, 3, 4, and 9 will be purged with a peristaltic pump at approximately 0.5 liter per minute. Purge water will be disposed on the ground. The water level probe will be used to monitor changes in water level during purging. The purge rate will be adjusted to minimize ground water drawdown. Field parameters will be measured with field meters during purging. Sampling will begin when these parameters have stabilized. Ground water samples will be collected directly from the discharge stream of the pump in appropriate sample containers provided by Edge.
3. Field parameter readings, date, time, weather conditions and any special field observations will be recorded on field data sheets for each monitoring well.
4. Sample bottles will be labeled with the date, sample location, sample depth, and sampler's name and placed into a cooler with ice or ice-substitute.
5. Field sampling equipment will be decontaminated between each well.

Surface water sampling in Carpenter Creek will be performed using a polyethylene sample bottle immersed in the water upstream of sampling personnel to avoid possible inclusion of suspended sediment. Surface water samples will be transferred to appropriate sample

bottles supplied by Edge. Field parameter readings, date, time, weather conditions and any special field observations will be recorded on the field data sheet.

A visual inspection will also be performed during the semi-annual monitoring events, and will include observations of the following items (at a minimum):

- landfill cover regarding vegetation and indications of erosion, seepage, or subsidence;
- stormwater facilities regarding ponding, obstruction of ditches, and indications of erosion;
- ground water and gas monitoring wells with respect to physical condition; and
- flow in Carpenter Creek.

Task 4.2 Laboratory Testing

Bennett will deliver water samples to Edge on the day of the semi-annual monitoring events. Samples to be analyzed for dissolved metals will be filtered at the lab. The anticipated analytical fees for Task 4 are presented in Exhibit B.

Task 4.3: Semi-Annual Gas Probe Monitoring

Methane gas concentrations will be measured at the seven gas monitoring wells at the Y-Road II Landfill using an RKI Gas Tracer combustible gas meter. The gas meter will be calibrated by the vendor using a 25% LEL methane standard and ambient oxygen conditions. Gas pressures will be measured at each well to the nearest 0.01 inches of water column using a digital manometer. The barometric pressure during the semi-annual monitoring events will be obtained from data recorded by the National Weather Service at the Bellingham International Airport.

Task 4.4: Semi-Annual Report

The Semi-Annual Report will include a discussion of site conditions observed during the January 2022 event, analytical results, and ground water flow direction and velocity, and summary tables for ground water, surface water, and gas monitoring results. Ground water contour maps for the two landfills, field data sheets, and laboratory results will be attached to the report, along with chain-of-custody documentation. The Semi-Annual Report will be submitted in PDF to Whatcom County within 30 days of receipt of the analytical data.

Task 4.5 2019 Annual Report

The 2022 Annual Report for the Y-Road Landfills will be prepared following the July 2022 event and will include time-series plots for conductivity, chloride, and total barium, iron, and manganese, qualitative analysis of water quality trends, summary tables of historic analytical data, and other data as previously described under Task 4.4 for the Semi-Annual Report. The 2022 Annual Report will be submitted in PDF to Whatcom County prior to September 30, 2022.

Task 5: Application for NPDES Permit Renewal – Cedarville Landfill

The current NPDES Permit No. WA0501490 expires on May 13, 2023. Task 5 involves analyzing the effluent quality and flow data developed over the past 9 years of LMS operation. A Technical Memorandum will be prepared as an attachment to the renewal application to summarize and support any proposed changes to the sampling frequency and parameters for the new permit. Bennett will prepare and submit the Draft Application, including NPDES Permit Forms 1 and 2C and the associated diagrams, to the WCHD in PDF format for review and comment. The Final Application will incorporate WCHD comments. Three originals of the Final Application will be prepared and distributed to WCHD and Ecology prior to the application deadline of December 1, 2022.

EXHIBIT "B" – Amendment #3
(COMPENSATION)

I. Budget and Source of Funding: The source of funding for this contract, in the amount not to exceed \$62,683, is the Whatcom County Solid Waste Fund.

II. Contract Budget:

TASK 1 - SEMI-ANNUAL MONITORING & REPORTING		RECOMMENDED BUDGET		
CEDARVILLE LANDFILL				
Task 1.1 - Project Management		Time	Rate	Total
Project Scoping and Setup		4	\$125.00	\$500.00
Project Management		12	\$125.00	\$1,500.00
Invoice Review		12	\$125.00	\$1,500.00
Correspondence With County and Outside Vendors		12	\$125.00	\$1,500.00
Task 1.1 Total				\$5,000.00
Task 1.2 - Semi-Annual GW Sampling/Inspection	Events	Time/Event	Rate	Total
Water Monitoring Event (April and October Events)	2	16	\$115.00	\$3,680.00
Redevelop Wells (Prior to April 2022 Event)		4	\$115.00	\$460.00
Sampling Equipment/Supplies/Courier (w/ 7.5% Markup)	2	1	\$1,700.00	\$3,400.00
Task 1.2 Total				\$7,540.00
Task 1.3 – Semi-Annual Gas Monitoring	Events	Time/Event	Rate	Total
Semi-Annual Monitoring (April and October Events)	2	2	\$115.00	\$460.00
Task 1.4 – Semi-Annual Report		Time	Rate	Total
Semi-Annual Monitoring Report (April Event)		8	\$125.00	\$1,000.00
Data Validation/Database Maintenance		2	\$125.00	\$250.00
Drafting – Ground Water Contour Maps		2	\$75.00	\$150.00
Task 1.4 Total				\$1,400.00
Task 1.5 – Annual Report		Time	Rate	Total
Annual Report (October Event)		14	\$125.00	\$1,750.00
Data Validation/Database Maintenance		2	\$125.00	\$250.00
Time Series Plots		6	\$125.00	\$750.00
Drafting – Ground Water Contour Maps		2	\$75.00	\$150.00
Task 1.5 Total				\$2,900.00
Task 1.6 – Laboratory Analysis (Edge Analytical)				
(11 Monitoring Wells/Duplicate/Field Blank)		Quantity	Rate	Total
Total Suspended Solids		24	\$17.00	\$408.00
Total Dissolved Solids		24	\$17.00	\$408.00
Chloride		26	\$15.00	\$390.00
Nitrate		24	\$16.00	\$384.00
Nitrite		24	\$16.00	\$384.00
Ammonia		24	\$16.00	\$384.00
Turbidity		24	\$15.00	\$360.00
Total Organic Carbon		24	\$42.00	\$1,008.00
Chemical Oxygen Demand		24	\$40.00	\$960.00
Total Metals (Ba, Fe, Mn, Zn) + Lab Digestion		26	\$80.00	\$2,080.00
Task 1.6 Subtotal				\$6,766.00
Markup (7.5%)				\$507.00
Task 1.6 Total				\$7,273.00
			TASK 1 TOTAL:	\$24,573.00
TASK 2 – ISGP SURFACE WATER MONITORING		RECOMMENDED BUDGET		
CEDARVILLE LANDFILL				
Task 2.1 - Quarterly Sampling and Site Inspection	Events	Time	Rate	Total
Quarterly Sampling Events	4	4	\$115.00	\$1,840.00
Quarterly Visual Inspection Report	4	1	\$115.00	\$460.00
Task 2.1 Total				\$2,300.00

Task 2.2 - Laboratory Analysis (Edge Analytical)		Quantity	Rate	Total
Turbidity		8	\$15.00	\$120.00
Total Metals (Cu and Zn)		4	\$40.00	\$160.00
<i>Task 2.2 Subtotal</i>				<i>\$280.00</i>
<i>Markup (7.5%)</i>				<i>\$21.00</i>
Task 2.2 Total				\$301.00
Task 2.3 - Quarterly Discharge Monitoring Reports/Visual Insp. Reports	Events	Time	Rate	Total
Quarterly Discharge Monitoring Reports	4	1	\$125.00	\$500.00
Quarterly Visual Inspection Report	4	1	\$125.00	\$500.00
Task 2.3 Total				\$1,000.00
Task 2.4 - ISGP Annual Report		Time	Rate	Total
2021 ISGP Annual Report to Ecology - Due May 15, 2022		5	\$125.00	\$625.00
			TASK 2 TOTAL:	\$4,226.00
TASK 3 - NPDES PERMIT SAMPLING				
CEDARVILLE LANDFILL			RECOMMENDED BUDGET	
Task 3.1 - NPDES Permit Sampling	Events	Time	Rate	Total
Field Sampling Events (Jan-April and Nov-Dec)	6	4	\$115.00	\$2,760.00
Peristaltic Pump/Field Monitoring Equipment	6	1	\$100.00	\$600.00
Task 3.1 Total				\$3,360.00
Task 3.2 - Monthly Discharge Monitoring Reports	Events	Time	Rate	Total
Discharge Monitoring Reports	12	2	\$125.00	\$3,000.00
Task 3.3 - Coordination of Annual O&M Work Items		Time	Rate	Total
Work Item Punchlist/Field Observation/Reporting		8	\$125.00	\$1,000.00
Task 3.3 Total				\$1,000.00
Task 3.4 - Laboratory Analysis (Edge Analytical)		Quantity	Rate	Total
Biological Oxygen Demand		6	\$49.00	\$294.00
Total Suspended Solids		6	\$17.00	\$102.00
Turbidity		18	\$15.00	\$270.00
Chloride		6	\$15.00	\$90.00
Total Metals (As, Ba, Cu, Fe, Mn, Ni, and Zn)		1	\$105.00	\$105.00
Ammonia		1	\$16.00	\$16.00
Alpha Terpineol/Benzoic Acid/p-Cresol/Phenol		1	\$220.00	\$220.00
Sulfate		1	\$16.00	\$16.00
Nitrate + Nitrite		1	\$26.00	\$26.00
Soluble Reactive Phosphorus		1	\$28.00	\$28.00
Total Organic Carbon		1	\$42.00	\$42.00
<i>Task 3.4 Subtotal</i>				<i>\$1,209.00</i>
<i>Markup (7.5%)</i>				<i>\$91.00</i>
Task 3.4 Total				\$1,300.00
			TASK 3 TOTAL:	\$8,660.00
TASK 4 - GROUND WATER, SURFACE WATER, AND GAS MONITORING – Y-ROAD LANDFILLS			RECOMMENDED BUDGET	
Task 4.1 - Semi-Annual Ground/Surface Water Sampling	Events	Time	Rate	Total
Sampling Events and Inspection	2	12	\$115.00	\$2,760.00
Field Sampling Equipment/Supplies (w/ 7.5% Markup)	2		\$400.00	\$800.00
Task 4.1 Total				\$3,560.00
Task 4.2 - Laboratory Analysis (Edge Analytical)				
4 Monitoring Wells/Surface Water		Quantity	Rate	Total
Total Suspended Solids		10	\$17.00	\$170.00
Total Dissolved Solids		10	\$17.00	\$170.00
Turbidity		10	\$15.00	\$150.00
Chloride		10	\$15.00	\$150.00
Nitrate		10	\$16.00	\$160.00
Nitrite		10	\$1615.00	\$160.00
Ammonia		10	\$16.00	\$160.00
Total Organic Carbon		10	\$42.00	\$420.00
Hardness		2	\$22.00	\$44.00
Sulfate		10	\$16.00	\$160.00

Chemical Oxygen Demand		10	\$40.00	\$400.00
Biochemical Oxygen Demand		2	\$49.00	\$98.00
Total Metals (As, Ba, Fe, Mn, Hg, Pb, Zn)		10	\$87.00	\$870.00
Dissolved Zn + Lab Filtration (Surface Water Sample)		2	\$15.00	\$30.00
<i>Task 4.2 Subtotal</i>				\$3,142.00
<i>Markup (7.5%)</i>				\$236.00
Task 4.2 Total				\$3,378.00
Task 4.3 - Semi-Annual Gas Probe Monitoring	Events	Time	Rate	Total
Gas Monitoring Events	2	2	\$115.00	\$460.00
Task 4.4 - Semi-Annual Report		Time	Rate	Total
Report Preparation		8	\$125.00	\$1,000.00
Data Validation/Database Maintenance		2	\$125.00	\$250.00
Drafting - Ground Water Contour Maps		2	\$75.00	\$150.00
Task 4.4 Total				\$1,400.00
Task 4.5 - Annual Report		Time	Rate	Total
Report Preparation		12	\$125.00	\$1,500.00
Data Validation/Database Maintenance		2	\$125.00	\$250.00
Time Series Plots		6	\$125.00	\$750.00
Drafting - Ground Water Contour Maps		2	\$75.00	\$150.00
Task 4.5 Total				\$2,650.00
			TASK 4 TOTAL:	\$11,448.00
TASK 5 – APPLICATION FOR NPDES PERMIT RENEWAL				
CEDARVILLE LANDFILL		Time	Rate	Total
Draft Application for Permit Renewal – Review Draft		32	\$125.00	\$4,000
Final Application for Permit Renewal		8	\$125.00	\$1,000
Site Exhibits		8	\$75.00	\$600.00
Task 5 Total				\$5,600
			SUBTOTAL:	\$54,507.00
			*CONTINGENCY (15%):	\$8,176.00
			TOTAL CONTRACT BUDGET:	\$62,683

* Contractor will not expend any contingency funds without prior written authorization of the County.

2022 Schedule of Fees – Bennett Engineering, LLC

The above contract budget is based on the following rates:

Personnel	Hourly Rate
Staff Engineer	\$75.00
Project Engineer	\$90.00
Senior Engineer I	\$105.00
Senior Engineer II	\$115.00
Project Manager	\$125.00
Principal Engineer	\$135.00
Hearing/Expert Testimony	\$150.00

Equipment	Rate
Disposable Bailers, each	\$10.00
Peristaltic Pump, per day	\$75.00
Sail Sampling Equipment, per day	50.00
Field Monitoring Equipment, per day	25.00
Field Filter/Purge Pump & Assembly, per day	50.00
Field Manometer, per day	\$25.00

Services	Rate
Subconsultant Services	Cost + 7.5%
Direct Project Expenses	Cost + 7.5%

III. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 10th of the month following the month of service. Please include purchase order number and/or contract number on invoice.
2. Invoices submitted for payment should be sent to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-589

File ID:	AB2021-589	Version:	1	Status:	Agenda Ready
File Created:	10/01/2021	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:	10/12/2021			Enactment #:	

Primary Contact Email: ABeck@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 Youth Services to provide housing case management services in the amount of \$33,977 for a total amended contract amount of \$212,748

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 Youth Services – Housing Case Management Contract Amendment #1

DATE: October 1, 2021

Attached is a contract amendment between Whatcom County and Northwest Youth Services for your review and signature.

▪ Background and Purpose

This contract provides funding to support housing case management and supportive services to youth through age 24, who are referred by the Whatcom Homeless Service Center. The goal of these services is to improve housing stability and reduce homelessness in Whatcom County. The purpose of this amendment is to increase the amount of case management available to homeless youth. It also allows for supplementary hazard pay as a means of workforce retention during the COVID-19 pandemic. This amendment adds ESG-CV funding in the amount of \$28,977 to support increased case management and \$5,000 in hazard pay for staff providing direct services.

▪ Funding Amount and Source

Funding for this contract, in an amount not to exceed \$212,748, is provided by local document recording fees and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). These funds are included in the 2021 budget. Council approval is required as additional funding provided by this amendment exceeds 10% of the approved budget.

Please contact Ann Beck, Human Services Supervisor at 360-778-6005 (ABeck@co.whatcom.wa.us) or Kathleen Roy, Assistant Director at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions or concerns regarding this request.



**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:
202106043 – 1

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing	
Contract or Grant Administrator:		Chris D'Onofrio	
Contractor's / Agency Name:		Northwest Youth Services	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input 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 #:	202106043	
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#: 14.231
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		202008014
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		122200 / 122800
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, RFP and Bid number(s): 21-04		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract 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 type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.			
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when :	
\$ 178,771		1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
This Amendment Amount:			
\$ 33,977			
Total Amended Amount:			
\$ 212,748			
Summary of Scope: This contract provides funding for case management and supportive services to youth in association with the Whatcom Homeless Service Center in an effort to improve housing stability and reduce homelessness in Whatcom County			
Term of Contract:	6 Months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 08/30/2021
	2. Health Budget Approval	KR/JG	Date: 09/28/2021
	3. Attorney signoff:	RB	Date: 10/01/2021
	4. AS Finance reviewed:	M Caldwell	Date: 9/29/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):	AB2021-589	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 Youth Services
108 Prospect Street
Bellingham, WA 98225**

CONTRACT PERIODS:

Original: 07/01/2021 – 12/31/2021

Amendment #1: 09/29/2021 – 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. Amend Exhibit A – Scope of Work, IV. Program Outcomes (3 & 4) to reflect a higher number of clients receiving case management services and a higher number of clients achieving stable housing.
2. Amend Exhibit B – Compensation, to increase funding by \$33,977 to support increased case management and hazard pay for staff providing direct services.
3. Funding for the total contract period (07/01/2021 – 12/31/2021) is not to exceed \$212,748
4. All other terms and conditions remain unchanged.
5. The effective start date of the amendment is 09/29/2021.

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: _____
Ann Beck, Human Services Supervisor Date

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

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

FOR THE CONTRACTOR:

	Jason McGill, Executive Director	
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

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

CONTRACTOR INFORMATION:

Northwest Youth Services
108 Prospect Street
Bellingham, WA 98225
jasonm@nwys.org

EXHIBIT "A" – Amendment #1
(SCOPE OF WORK)

I. Background

Whatcom County's Plan to End Homelessness identifies youth, aged up to 24, as a population impacted by homelessness and lists the provision of safe, affordable housing with supportive services as a way to reduce and end youth homelessness. Provision of services at shelters and other interim housing options is also a component of the service continuum that increases success in reaching housing stability. Northwest Youth Services (NWYS) is the only non-tribal agency serving youth in Whatcom County by offering housing services for homeless youth. NWYS has had a significant backlog of young people awaiting housing and services due to limited operating capacity.

Through this contract, NWYS will serve as one of the Whatcom Homeless Service Center (WHSC) partner agencies providing housing case management and will serve as a specialized portal of entry into WHSC housing services for youth. The purpose of this contract is to provide housing case management for youth waiting for housing services in order to achieve housing stability and reduce youth homelessness in Whatcom County.

II. Definitions

Housing Pool (HP)	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington's Homeless Management Information System Database
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1). centralized coordinated system of access, (2). targeted prevention assistance to reduce the number of households that become homeless, (3). re-housing of those who become homeless, (4) supportive services promoting housing stability and self-sufficiency, and (5). data management and tracking information for people receiving homeless housing services in Whatcom county and according to Washington State Department of Commerce HMIS data collection requirements.

III. Statement of Work

The Contractor will provide housing case management services. Housing case management activities include arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of households and helping them obtain housing stability. Services and activities include:

1. Developing, securing, coordinating, and retaining services and suitable housing. Services include but are not limited to:
 - a. Tenant counseling;
 - b. Assisting individuals and households with understanding leases;
 - c. Securing utilities;
 - d. Making moving arrangements;
 - e. Representative payee services concerning rent and utilities;
 - f. Mediation and outreach to property owners related to locating or retaining housing;
 - g. Monitoring and evaluating household progress;
 - h. Assuring that household rights are protected;

- i. Developing an individualized housing and service plan, including a path to permanent housing stability subsequent to assistance.
2. Intake – Contractor will provide intake services to youth in Whatcom County seeking housing to collect client information, assess barriers to stable housing, and eligibility for housing programs. Services will be provided to low-income and/or homeless youth residing in Whatcom County.
3. Youth Housing Pool (YHP) – Youth housing pool case management includes services designed to educate youth who are homeless or almost homeless, about available programs, provide them with a point of access to housing services by working collaboratively with the WHSC, and engage with them to address barriers to housing.

Individuals and households served shall have incomes at or below 50% Area Median Income (AMI). Income eligibility will be determined by the funding sources used for case management.

IV. Program Outcomes

During this contract period, the housing case management services provided by the Contractor will deliver the following outcomes:

1. At least twenty (20) unsheltered youth households will receive case management services.
2. At least twenty (20) youth in emergency shelters or transitional housing will receive case management services.
3. At least thirty-five (35) youth in permanent housing will receive case management services.
4. At least thirty (30) youth will achieve housing stability while receiving case management services.
5. At least 85% of youth households who obtained housing will remain stably housed six months after existing case management services.

V. Additional Requirements

The Contractor will:

1. Comply with:
 - a. Relevant State of Washington Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines, which can be accessed at the following links: <https://www.commerce.wa.gov/wp-content/uploads/2020/06/Commerce-ESG-CV-Overview-.pdf> and <https://deptofcommerce.box.com/s/fsmf4pmwkroszjt702j1i9cfnvk5ixmq>
 - b. Special Terms and Conditions of Commerce Emergency Solutions – COVID-19 (ESG-CV) Grant, herein incorporated as Exhibit E.
2. Participate in HMIS data collection efforts as directed by the WHSC; including HMIS training, HMIS data entry, updating client data as necessary, and exiting clients from HMIS. Services which must be inputted into HMIS include (but are not limited to) financial services – including deposits, rental payments, and completed home visits.
3. Comply with the following Housing Pool (HP) Referral procedure. When Contractor staff believes a referral from the HIP is not a good fit for their program, a situation which should be rare, the following procedures must be followed:

- a. Contractor will submit a written description of the situation that justifies returning the client to the HP, and
 - b. An in-person case conference must be scheduled within five days of request to return a referral. The case conference will include Contractor staff, WHSC housing referral specialist, and HP case management services coordinator (or designee).
 - c. The course of action mutually agreed to at the case conference will be recorded in writing, constituting a binding agreement.
 - d. As the parties to this contract learn more about referral success factors, procedures may be amended accordingly.
4. Promote public health in homeless housing and preserve the safety and stability of available housing stock for homeless housing by:
 - a. Informing clients/tenants of the importance of upholding safety and health in homeless housing, and of preserving continued access to housing by our homeless housing system.
 - b. Informing clients/tenants that they may be expected to participate in cleaning and decontaminating their housing unit when necessary for health reasons.
 - c. Informing clients/tenants that damages to their unit may result in eviction and loss of the unit in the future for our homeless housing system.
 - d. Informing prospective tenants that they need to maintain a safe and clean apartment in advance of receiving housing and periodically after they are in housing.
 - e. In scattered sites, master lease, public housing, and staffed housing programs, case managers will work with the client/tenant to address the issues of health and safety that arise, including that of suspected methamphetamine use. The WCHD will provide case managers with free and confidential technical assistance on effective methods for cleaning apartment units that have been contaminated, whenever requested.
 - f. Documenting in each client file that these expectations were communicated to the client/tenant.
 5. Require professional development training for direct service staff and supervisors.
 6. Attend Whatcom County Coalition to End Homelessness meetings and sponsored activities.
 7. Attend meetings and events coordinated by the WHSC.

VI. Reporting Requirements

The Contractor shall submit quarterly reports* to the WCHD utilizing HMIS data by using the quarterly reporting template accessed on the County website, as noted below. Reports will demonstrate the Contractor's progress toward achieving the program outcomes identified above. Quarterly reports are due on April 15, July 15, October 15, and January 15.

*Contractors will be notified via email of updates to quarterly reporting templates. Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at: <https://www.whatcomcounty.us/DocumentCenter/View/56308/Reporting-Tool---Case-Management-NWYS-2021>.

Reports will include data for only those clients served under this contract and include:

1. Number of unsheltered households that received case management during the quarter.
2. Number of sheltered households that received case management during the quarter.

3. Number of individuals in permanent supportive housing that received case management services during the quarter.
4. Average length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (RRH, PSH, or other stable housing situation).
5. Median length of time homeless (unsheltered, sheltered, and/or transitional housing project) in case management prior to being housed (in RRH, PSH, or other stable housing situation).
6. Number of case managed households that have been stably housed for six (6) months.
7. Number of case managed households that have been stably housed for twelve (12) months or more.
8. Number of case managed households that lost stable housing or exited case management while homeless.
9. Number of case managed households that achieved housing stability while receiving case management services.

VII. Flex Funding

Flex funds must follow the Guidelines established by the County and be reported on the spreadsheet provided by the County (Exhibit D) and signed by an authorized agency signatory. In addition, all flex funds must be accompanied by receipts.

Exhibit B – Amendment #1
(COMPENSATION)

- I. **Source of Funding and Budget:** The source of funding for this contract, in an amount not to exceed \$212,748, is local document recording fees, and the Washington State Department of Commerce Emergency Solutions COVID-19 Grant (CFDA 14.231). COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

*Cost Description	Documents Required with Invoices	Amount
Document Recording Fee Funding		
Scattered Site Housing Program Manager (.25 FTE)	Approved composite billing rate worksheet for each staff member and timesheets for the period.	\$8,567
Housing Program Director (.5 FTE)		\$18,800
Facility Based Housing Program Manager (.5 FTE)		\$17,134
Case Managers (1.3 FTE)		\$38,701
Data Analytics and Reporting (.1 FTE)		\$3,155
Data Entry Assistant (.05 FTE)		\$938
Direct Service Staff Training	Include name of traveler, dates, start & end point, and purpose. Receipts are required for transportation costs, registration fees, etc. Lodging & meal costs follow federal guidelines (www.gsa.gov). Receipts for meals are not required.	\$500
Program Specific Occupancy Costs	GL Detail	\$2,400
Program Specific Phones, Supplies & Postage		\$840
Flex Funds	Flex fund spreadsheet and copies of receipts	\$1,000
SUBTOTAL		\$92,035
Emergency Solutions Grant COVID Funding		
Scattered Site Housing Program Manager (.25 FTE)	Approved Composite Billing Rate Worksheet for each staff member and timesheets for the period.	\$8,567
Case Managers (Rapid Rehousing 2 FTE)		\$56,851
Interim Housing Program Management (HUSLY, 1 FTE)		\$32,147
Hazard Pay for direct service staff		\$4,673
SUBTOTAL		\$102,238
Indirect Costs – shall not exceed the rates indicated below:		
Document Recording Fee Indirect Costs @ 10%		\$9,203
ESG-CV Indirect Costs at 7%		\$7,157
Additional Document Recording Fee Indirect (up to 3% of ESG-CV Costs)		\$2,115
SUBTOTAL Indirect		\$18,475
TOTAL BUDGET (7/1/2021 – 12/31/2021)		\$212,748

*Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County.

II. **Invoicing:**

- The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15th of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.

2. The Contractor shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The county may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:
I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-571

File ID:	AB2021-571	Version:	1	Status:	Agenda Ready
File Created:	09/24/2021	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		
Assigned to:	Council Public Works & Health Committee				Final Action:
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion of an ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Whatcom County Code 12.20 and RCW 36.87 provide for the procedures for approving road vacations. The code amendment will better align the processing of road vacation petitions and provide better service to petitioners. The code changes will clarify and correct outdated sections of the code

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Staff Memo, Proposed ordinance (clean), Proposed ordinance (redline)



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: Ordinance Amending Whatcom County Code 12.20 Road Vacations

DATE: September 24, 2021

▪ **Requested Action**

Adopt an ordinance amending Whatcom County Code 12.20 to update procedures for processing petitions.

▪ **Background and Purpose**

Whatcom County Code 12.20 was last amended on October 11, 1994. The Public Works Department and the County Council Office wish to amend the code to better align the processing of road vacation petitions and provide better service to petitioners. The code changes will clarify and correct outdated sections of the code as well. The processing of these petitions will not change the schedule by which Council hears and receives information about these petitions. Road Vacations will still include a Council agenda item requesting direction to move forward on an Engineer's report prior to bringing forward a resolution.

Please contact me at extension 6216 if you have any questions or concerns regarding the terms of this ordinance.

Encl.

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.20 ROAD VACATIONS TO
UPDATE PROCEDURES FOR PROCESSING PETITIONS**

WHEREAS, the Revised Code of Washington Chapter 36.82 authorizes the Whatcom County Council to receive compensation for the vacation of county roads; and

WHEREAS, on November 23, 1993, Council adopted Ordinance 1993-080 to replace fees listed with a reference to the fee set forth in the Whatcom County Unified Fee Schedule and replace the term "board" or "commission" with the term "Council"; and

WHEREAS, on October 11, 1994, Council adopted Ordinance 1994-059 to streamline the road vacation petition, review, and approval/denial processes; and

WHEREAS, the County Council wishes to amend WCC Chapter 12.20 to better align the processing of road vacation petitions with the general operations of the Public Works Department and County Council Office and provide better service to petitioners.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.20 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 9/28/2021)

Satpal Sidhu, County Executive

Date Signed: _____

EXHIBIT A

Chapter 12.20 ROAD VACATIONS

Sections:

- 12.20.010 Authority.
- 12.20.020 Scope and application.
- 12.20.030 Petition – Fees.
- 12.20.040 Petition – Format.
- 12.20.050 Engineer's report and resolutions.

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.010).

12.20.020 Scope and application.

This chapter shall apply to all petitions to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to Chapters 36.87 and 58.17 RCW. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.020).

12.20.030 Petition – Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by a petition fee as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition fee shall be submitted to the Whatcom County public works department.

C. The portion of the petition fee designated for recording the final order of vacation may be reimbursed to the petitioner if the council denies the petition.

12.20.040 Petition – Format.

A. Property owners of the majority of the frontage on any county road or portion thereof may petition the council to vacate and abandon that same county road or portion thereof by submitting a vacation petition to the Whatcom County public works department.

B. The petition must be signed by each petitioner and include the name, address and land owned for each petitioner and set forth that the right of way is useless as part of the county road system and that the public will be benefited by its vacation.

C. The petition must include a legal description of the right of way proposed to be vacated including the square footage of the area of vacation. The county engineer may require a drawing prepared by a surveyor licensed by the State of Washington.

D. As part of the public notification process the petitioner shall include in the petition the names, signatures and addresses of five persons who own property within a one-mile radius

1 of the road to be vacated. If the petitioner can demonstrate to the Whatcom County public
2 works department that fewer than five people own property within a one-mile radius of the
3 road to be vacated then the petitioner shall submit with the petition an affidavit stating the
4 same, in addition to the names, signatures and addresses of those people who do own
5 property within a one-mile radius of the road to be vacated.

6
7 E. By signing the petition, the notified property owners are only acknowledging that they
8 received notice of the petitioner's intent to seek vacation of the county road or portion
9 thereof. Notified property owners are not agreeing to become co-petitioners for the road
10 vacation. (Ord. 94-059 Exh. A)

11
12 12.20.050 Engineer's report and resolutions.

13 A. The county engineer shall examine the petition for completeness and prepare a
14 resolution for council to consider vacating the road. If the Whatcom County council
15 approves the resolution to consider vacating the road it will direct the county engineer to
16 prepare an engineer's report. If the Whatcom County council does not approve the
17 resolution to consider vacating the road the petition to vacate the road shall be deemed to
18 have been denied.

19
20 B. The county engineer shall investigate and prepare the engineer's report on the petition.
21 The engineer is authorized and directed to review each vacation and recommend the
22 compensation amount for the vacation based on current market data. If necessary, the
23 county will contract for a full appraisal, and the petitioner will be responsible for the costs.

24
25 C. Upon completion of the report, the county engineer will prepare a resolution to vacate.
26 In addition to the requirements of RCW 36.87.040, the resolution shall contain the following
27 information:

- 28
29 1. The petitioner's name , the date the petition was filed with the public works
30 department, a statement that the application and report fee has been paid, and a
31 short description of the roads or portion of roads to be vacated;
32
33 2. A legal description of the roads or portions thereof to be vacated;
34
35 3. A statement that the applicant has six calendar months from the date the
36 resolution is passed to pay any remaining fees to the Whatcom County public works
37 department, with checks made payable to the Whatcom County treasurer, prior to
38 the vacation becoming effective, including but not limited to the compensation
39 amount of the area sought to be vacated;
40
41 4. A statement that the petitioner has met all of the petition requirements as set
42 forth by this chapter, and by all other applicable laws;
43
44 5. The compensation amount of the area sought to be vacated as determined by the
45 county engineer;
46

1 6. The classification of the road area and the nature of the county's interest therein,
2 according to the following classification:

3
4 Class A. Public expenditure made,

5 Class B. No public expenditures made or nonascertainable from records,

6 Class 1. No part thereof lies in any plat,

7 Class 2. Part or all lies within a platted subdivision,

8 Class 3. Did not remain unopened for public use for a period of five years after the
9 authority was granted for opening it,

10 Class 4. Remained unopened for public use for five or more years after the order
11 made or authority granted for opening it,

12 Class 5. Is contained within that portion of a plat which is to be replatted,

13 Class 6. Abandoned in fact due to relocation of right-of-way,

14 Class 7. Informalities exist in the records of title which are construed to invalidate
15 and divest the public of any right, title or interest in the right-of-way.

16
17 7. A statement that the vacation does not become effective until the fees are paid,
18 and the final order and the resolution are recorded with the county auditor. (Ord. 94-
19 059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.060).

20
21 D. The clerk of the council will schedule a public hearing on the resolution to vacate. The
22 county engineer will provide public notice in accordance with Chapter 36.87 RCW.

23
24 E. After the public hearing, the Whatcom County council shall consider the resolution to
25 vacate. Action on the resolution will be the Council's final action in the matter.

26
27 F. The petition shall be deemed to have been denied if a motion to approve the resolution
28 fails, or if by other means a majority of the council denies approval of the resolution .

29
30 G. If the Whatcom County council passes the resolution to vacate, the county engineer, or
31 the county engineer's designee, will prepare a preliminary order of vacation. If the
32 approved resolution contains a provision seeking or requiring payment of further costs
33 beyond those covered by the petition fee or the value of the area being vacated, the county
34 engineer shall notify the applicant that they have six calendar months in which to pay such
35 costs. At the time of the hearing the Whatcom County council may waive payment of the
36 appraised value, or any portion thereof, if it finds that the granting of such vacation will be
37 of some benefit to Whatcom County. Said waiver shall be included as part of the resolution
38 approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior
39 code § 7.40.070).

40
41 H. If the petitioner submits the total amount owed to the county within the six calendar
42 months after the date of passage of the resolution, or if upon passage the resolution no
43 money is owed, the county engineer shall prepare a final order of vacation and shall cause
44 it, along with the resolution, to be recorded by the Whatcom County Auditor. If the
45 petitioner fails to make payment as required, the Council's authorization of the vacation
46 becomes null and void.

- 1 I. The vacation becomes official only after a final order of vacation and the resolution to
- 2 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)

PROPOSED BY: PUBLIC WORKS
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.20 ROAD VACATIONS TO
UPDATE PROCEDURES FOR PROCESSING PETITIONS**

WHEREAS, the Revised Code of Washington Chapter 36.82 authorizes the Whatcom County Council to receive compensation for the vacation of county roads; and

WHEREAS, on November 23, 1993, Council adopted Ordinance 1993-080 to replace fees listed with a reference to the fee set forth in the Whatcom County Unified Fee Schedule and replace the term "board" or "commission" with the term "Council"; and

WHEREAS, on October 11, 1994, Council adopted Ordinance 1994-059 to streamline the road vacation petition, review, and approval/denial processes; and

WHEREAS, the County Council wishes to amend WCC Chapter 12.20 to better align the processing of road vacation petitions with the general operations of the Public Works Department and County Council Office and provide better service to petitioners.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.20 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 9/28/2021)

Satpal Sidhu, County Executive
Date Signed: _____

EXHIBIT A

Chapter 12.20 ROAD VACATIONS

Sections:

- 12.20.010 Authority.
- 12.20.020 Scope and application.
- 12.20.030 Petition – Fees.
- 12.20.040 Petition – Format.
- 12.20.050 Engineer's report and resolutions.
- ~~12.20.060 Resolution requirements.~~
- ~~12.20.070 Payment of costs when.~~

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.010).

12.20.020 Scope and application.

This chapter shall apply to all applications~~petitions~~ to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to Chapters 36.87 and 58.17 RCW. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.020).

12.20.030 Petition – Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by a petition appraisal ~~fee and application fee~~ as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition~~full fees for application and appraisal~~ shall be submitted to the Whatcom County public works department.

~~C. The appraisal fee may be refunded by the council at the recommendation of the county engineer if no appraisal has been carried out in connection with the road vacation petition. Said refund may be given only after the council makes its final decision in connection with the road vacation petition in question.~~

CD. The portion of the petition~~application~~ fee designated for recording the final order of vacation may be reimbursed to the petitioner if the council denies the petition.

~~E. A portion of the application fee, but no more than 30 percent of that application fee, may be reimbursed to the petitioner by the council at the time the application is approved, if the vacation was granted pursuant to the Territorial Land Act of 1890. (Ord. 94-059 Exh. A; Ord 93-080 Exh. P; prior code § 7.40.030).~~

12.20.040 Petition – Format.

1 A. ~~Property Owners~~ of the majority of the frontage on any county road or portion thereof
2 may petition ~~the council to vacate and abandon for the vacation and/or abandonment of~~
3 that same county road or portion thereof by ~~submitting a vacation petition to the Whatcom~~
4 ~~County public works department, completing a form prepared by Whatcom County.~~

5
6 ~~B. The petition must be signed by each petitioner and include the name, address and land~~
7 ~~owned for each petitioner and set forth that the right of way is useless as part of the county~~
8 ~~road system and that the public will be benefited by its vacation.~~

9
10 ~~C. The petition must include a legal description of the right of way proposed to be vacated~~
11 ~~including the square footage of the area of vacation. The county engineer may require a~~
12 ~~drawing prepared by a surveyor licensed by the State of Washington.~~

13
14 ~~DB. As part of the public notification process included on the petition and submitted by the~~
15 petitioner shall ~~include in the petition~~ be the ~~names,~~ signatures and addresses of five
16 persons ~~who owning~~ property within a one-mile radius of the road to be vacated, ~~as part of~~
17 ~~the public notification process, unless If~~ the petitioner can demonstrate to ~~the Whatcom~~
18 ~~County public works the transportation~~ department that fewer than five people own
19 property within a one-mile radius of the road to be vacated ~~then, in which case~~ the
20 petitioner shall submit ~~with the petition~~ an affidavit stating the same, ~~in addition to the~~
21 ~~names along with the,~~ signatures ~~and addresses of as those many~~ people ~~who as~~ do own
22 property within a one-mile radius of the road to be vacated.

23
24 ~~EC. By signing the petition, the notified~~ property owners are ~~only~~ acknowledging that they
25 ~~are received-notified notice~~ of the petitioner's intent to seek vacation of the county road or
26 portion thereof. ~~Notified property owners~~ They are not agreeing to become co-petitioners for
27 the road vacation. (Ord. 94-059 Exh. A)

28
29 12.20.050 Engineer's report and resolutions.

30 A. The county ~~road~~ engineer shall examine ~~and, if necessary, perform an appraisal of the~~
31 ~~road proposed to be vacated; the engineer shall perfect the legal description of the road~~
32 ~~proposed to be vacated, and report upon such vacation and abandonment to the Whatcom~~
33 ~~County council. Said report shall be in the form of a resolution by which the Whatcom~~
34 ~~County council either authorizes or denies the petition to vacate the county road; the~~
35 ~~petition for completeness and prepare a resolution for council to consider vacating the road.~~
36 ~~If the Whatcom County council approves the resolution to consider vacating the road it will~~
37 ~~direct the county engineer to prepare an engineer's report. If the Whatcom County council~~
38 ~~does not approve the resolution to consider vacating the road the petition to vacate the~~
39 ~~road shall be deemed to have been denied.~~

40
41 B. ~~The county engineer shall investigate and prepare the engineer's report on the petition.~~
42 ~~The engineer is authorized and directed to review each vacation and recommend the~~
43 ~~compensation amount for the vacation based on current market data. If necessary, the~~
44 ~~county will contract for a full appraisal, and the petitioner will be responsible for the costs.~~

45
46 C. ~~Upon completion of the report, the county engineer will prepare a shall file the petition~~
47 ~~and resolution to vacate, with the Whatcom County council upon completion of his/her~~

report. In addition to the requirements of RCW 36.87.040, the resolution shall contain the following information:

1. The petitioner's name, the date the petition was filed with the public works department, a statement that the application and report fee has been paid, and a short description of the roads or portion of roads to be vacated;

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2. A legal description of the roads or portions thereof to be vacated;

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3. A statement that the applicant has six calendar months from the date the resolution is passed to pay any remaining fees to the Whatcom County public works department, with checks made payable to the Whatcom County treasurer, prior to the vacation becoming effective, including but not limited to the compensation amount of the area sought to be vacated;

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4. A statement that the petitioner has met all of the petition requirements as set forth by this chapter, and by all other applicable laws;

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5. The compensation amount of the area sought to be vacated as determined by the county engineer;

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6. The classification of the road area and the nature of the county's interest therein, according to the following classification:

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Class A. Public expenditure made,

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Class B. No public expenditures made or nonascertainable from records,

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Class 1. No part thereof lies in any plat,

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Class 2. Part or all lies within a platted subdivision,

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Class 3. Did not remain unopened for public use for a period of five years after the authority was granted for opening it,

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Class 4. Remained unopened for public use for five or more years after the order made or authority granted for opening it,

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Class 5. Is contained within that portion of a plat which is to be replatted,

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Class 6. Abandoned in fact due to relocation of right-of-way,

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Class 7. Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title or interest in the right-of-way.

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7. A statement that the vacation does not become effective until the fees are paid, and the final order and the resolution are recorded with the county auditor. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.060).

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1 D. The clerk of the council will schedule a public hearing on the resolution to vacate. The
2 county engineer will after its arrival in the council office, with provide public notice to be
3 given as provided in accordance with Chapter 36.87 RCW.

4
5 E. After the public hearing, the Whatcom County council shall consider the resolution to
6 vacate petition in resolution form. Action on the resolution will be the eCouncil's final action
7 in the matter.

8
9 F. The petition shall be deemed to have been denied if a motion to approve of the
10 resolution fails, or if by other means a majority of the council denies approval of the
11 resolution or petition. If the engineer recommends, by resolution, that a petition be denied
12 and the council disagrees with the engineer's recommendation to deny, the council may
13 amend the resolution to indicated that it is approving of the petition despite the engineer's
14 recommendation.

15
16 G. If the Whatcom County council passes the resolution to vacate, the county engineer, or
17 the county engineer's designee, will prepare a preliminary order of vacation. If the
18 approved resolution contains and there is a provision seeking or requiring payment by the
19 applicant of further costs beyond those covered by the petition fee or appraised the value of
20 the area being vacated, the county engineer clerk of the council shall notify the applicant
21 that they/he/she has six calendar months in which to pay for such costs. At the time of
22 the hearing the Whatcom County council may waive payment of the appraised value, or any
23 portion thereof, if it finds that the granting of such vacation will be of some benefit to
24 Whatcom County. Said waiver shall be included as part of the resolution approving of the
25 vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior code §
26 7.40.070).

27
28 H. If the petitioner applicant payssubmits the total amount -such money as is owed to the
29 county within the six calendar months after the date of passage of the resolution, or if upon
30 passage the resolution no money is owed the county by the petitioner, the county
31 engineer clerk of the council shall prepare a final an-order of vacation and shall cause have
32 it, along with the resolution, to be recorded by the Whatcom eCounty Aauditor. If the
33 petitioner applicant fails to make a-payment as required, the Ccouncil's authorization of the
34 vacation becomes null and void.

35
36 I. The vacation becomes official only after a final order of vacation and the resolution to
37 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)

38
39 12.20.060-Resolution requirements.

40 The resolution shall contain the following information, in addition to the requirements of
41 RCW 36.87.040:

42
43 A. The petitioner's name and mailing address, the date the petition was filed with the
44 transportation department, a statement that the application and report fee has been paid,
45 and a short description of the roads or portion of roads to be vacated;

46
47 B. A legal description of the roads or portions thereof to be vacated;

~~C. A statement that the applicant has six calendar months from the date the resolution is passed to pay any remaining fees to the Whatcom County council office, with checks made payable to the Whatcom County treasurer, prior to the vacation becoming effective, including but not limited to the appraised value of the area sought to be vacated;~~

~~D. A statement that the petitioner has met all of the petition requirements as set forth by this chapter, and by all other applicable laws;~~

~~E. The fair market value of the area sought to be vacated as determined by appraisal;~~

~~F. The classification of the road area and the nature of the county's interest therein, according to the following classification:~~

- ~~1. Class A. Public expenditure made;~~
- ~~2. Class B. No public expenditures made or nonascertainable from records;~~
- ~~3. Class 1. No part thereof lies in any plat;~~
- ~~4. Class 2. Part or all lies within a platted subdivision;~~
- ~~5. Class 3. Did not remain unopened for public use for a period of five years after the authority was granted for opening it;~~
- ~~6. Class 4. Remained unopened for public use for five or more years after the order made or authority granted for opening it;~~
- ~~7. Class 5. Is contained within that portion of a plat which is to be replatted;~~
- ~~8. Class 6. Abandoned in fact due to relocation of right-of-way;~~
- ~~9. Class 7. Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title or interest in the right-of-way;~~

~~G. A statement that the vacation does not become effective until the fees are paid, and the final order and the resolution are recorded with the county auditor. (Ord. 94-059-Exh. A; Ord. 93-080-Exh. P; prior code § 7.40.060).~~

~~12.20.070 Payment of costs when:~~

~~Recompense in the amount of the appraised value and all certified costs and expenses incurred in the proceedings above and beyond those covered by the application and appraisal fee shall be tendered within six months of the hearing on the petition for vacation; provided, however, that at the time of the hearing the county council may waive payment of the appraised value, or any portion thereof, if it finds that the granting of such vacation will be of some specific benefit to Whatcom County. Said waiver shall be included as a part of~~

1 the resolution approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-
2 15 § 1; prior code § 7.40.070).
3



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-584

File ID:	AB2021-584	Version:	1	Status:	Agenda Ready
File Created:	09/30/2021	Entered by:	SMock@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		
Assigned to:	Council Public Works & Health Committee			Final Action:	
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Discussion informing the Council on the status of the June 10th Emergency Proclamation to repair Deer Trail, a local access road in the Birch Bay Community

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Works sought an Emergency Proclamation, signed by Executive Sidhu on June 10, 2021. Per Whatcom Co. Code 3.08.060(B), Public Works would like to update County Council on the status of the emergency effort

HISTORY OF LEGISLATIVE FILE

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

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



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

Memorandum

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

Through: Jon Hutchings, Public Works Director *JH*

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

Date: September 29, 2021

Re: Deer Trail Slide Damage Repair, CRP No. 921020
Emergency Proclamation Update

Requested Action

There is **no action** requested of the County Council with this discussion item. Per Whatcom County Code 3.08.060(B), Public Works is informing the Council on the status of the June 10th Emergency Proclamation to repair Deer Trail, a local access road in the Birch Bay Community.

Background and Purpose

In early January 2021 severe winter storms, high winds and flooding caused erosion and a collapse of a portion of Deer Trail, a Whatcom County local access road on the north end of Birch Bay. Reconstruction of approximately 150 lineal feet of this roadway is necessary to mitigate the emergency situation and restore the sole source of accessibility this road provides to 70+ single family residential homes. Public Works sought an Emergency Proclamation, signed by Executive Sidhu on June 10, 2021, after a professional geotechnical engineering evaluation, conducted in the spring of 2021, determined that the road could fail again during the next rainy season. Whatcom County has selected Stremmler Gravel, Inc. as the contractor to perform the needed roadway repairs under the authority of the Proclamation of Emergency.

Public Works executed a not-to-exceed contract with Stremmler Gravel, Inc. on September 24, 2021 in the amount of \$700,000 which utilizes an Equipment Rental Agreement. Said agreement relies on *blue book* rental rates for equipment, invoices for materials used, and prevailing wages for labor that are verified by certified payroll. In addition, it provides for an industry standard profit margin for the Contractor. There will be a full-time inspector on the project site at all times to ensure compliance with contract, check equipment & materials used and verify hours worked.

Funding Amount and Source

The not to exceed amount estimated in this emergency contract is \$700,000. This work will be funded with Local Road Funds. There is sufficient budget authority for this expenditure in the Unanticipated Site Improvements CRP 921020 in conjunction with unused construction funds in the Mosquito Lake Rd. / Hutchinson Creek Tributary project CRP 919006, which was delayed and will not be constructed in 2021.

Please contact Jim Karcher at (360) 778-6271 if you have any questions or concerns regarding this request.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-536

File ID:	AB2021-536	Version:	1	Status:	Agenda Ready
File Created:	09/13/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		
Assigned to:	Council Criminal Justice and Public Safety Committee				Final Action:
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Report from Superior Court

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council Finance and Administrative Services Committee	WITHDRAWN	

Attachments: Agenda Revision Notice for 9.28.21.pdf

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

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



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

WHATCOM COUNTY COUNCIL AGENDA REVISION NOTICE FOR SEPTEMBER 28, 2021

VIRTUAL MEETING
AGENDA REVISED 9.28.2021
(TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

THE FOLLOWING ITEM HAS BEEN **WITHDRAWN** FROM FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

Special Presentation

1. [AB2021-536](#) Report from Superior Court

Reason: Item rescheduled to 10.12.2021 Criminal Justice and Public Safety Committee

THE FOLLOWING ITEM HAS BEEN **WITHDRAWN** FROM COUNCIL:

Public Hearings

2. [AB2021-414](#) Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

Reason: Item scheduled incorrectly (correct hearing date is 10.12.2021)

THE FOLLOWING ITEM HAS BEEN **ADDED** TO COUNCIL:

ITEMS ADDED BY REVISION

1. [AB2021-578](#) Request authorization for the Whatcom County Prosecutor's Office to join Whatcom County with several other counties and the Washington State Association of Counties as a plaintiff in Benton County, et al. v. State of Washington filed in the King County Superior Court, an action seeking a declaratory judgment regarding obligations under State v. Blake

Reason: Item added by the Prosecuting Attorney's Office

THE FOLLOWING COUNCIL MEETING AGENDA ITEMS HAVE BEEN **REVISED**:

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2021-559](#) Council appointment to fill vacancies on the Drayton Harbor Shellfish Protection District Advisory Committee - Applicant(s): Ravyn Whitewolf and [Charlie Hawkins](#)

Reason: Item revised to add additional applicant

INTRODUCTION ITEMS

1. [AB2021-547](#) Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440

Reason: Substitute version submitted by the Administration



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-573

File ID:	AB2021-573	Version:	1	Status:	Agenda Ready
File Created:	09/27/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		

Assigned to: Council Criminal Justice and Public Safety Committee

Final Action:

Agenda Date: 10/12/2021

Enactment #:

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

TITLE FOR AGENDA ITEM:

Report from District Court

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

District Court's Annual 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
(360) 778-5010

Agenda Bill Master Report

File Number: AB2021-574

File ID:	AB2021-574	Version:	1	Status:	Agenda Ready
File Created:	09/27/2021	Entered by:	AReynold@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Report		

Assigned to: Council Planning and Development Committee

Final Action:

Agenda Date: 10/12/2021

Enactment #:

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

TITLE FOR AGENDA ITEM:

Report from the Planning and Development Services Department

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Planning and Development Service's Biannual 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
(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:	10/12/2021			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.

9.28.2021: Discussion of proposed amendments to Title 22 (Land Use & Development, Exhibit E) and the Shoreline Management Program Map (Exhibit G).

10.12.2021: Discussion of proposed amendments to Title 23 (Shoreline Management Program)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/13/2021	Council Committee of the Whole	DISCUSSED	
09/14/2021	Council Committee of the Whole	DISCUSSED	
09/28/2021	Council Committee of the Whole	DISCUSSED	

Attachments: Memo for 10.12.docx, Memo for 9.28 - Title 22 and SMP Map.docx, Exhibit D - WCC Title 23 (SMP) 2021-05-13 (PC approved)

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
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Mark Personius
Director

Memorandum

DATE: September 30, 2021
TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program (SMP) Periodic Update 2020

Today's Goals

On October 12th the Council's Committee of the Whole will continue its review of the SMP Update, focusing on proposed amendments to Title 23 (Shoreline Management).

Attachments

- **Exhibit D – WCC Title 23**

All documents are available in pdf and Word versions on PDS's SMP Update webpage:

<https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>.

Amendments to Exhibit D (Title 23, Shoreline Management)

(Note: Topic numbers (1, 2, 3...) and letters (a, b, c...) refer to the topic numbers assigned in the Scoping Report and thus may not be sequential.)

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)).

- d) **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).

Topic #2, Consistency with State law

- 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)

- 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 #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.

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.”

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

c) Consider ways to improve protections for salmon and forage fish habitat.

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.

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)

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 #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)

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)

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)

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)

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 #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.**

Changes to Title 23 regarding Cherry Point are flagged as Council-proposed language in §23.40.125 (Cherry Point Management Area). This includes making the Cherry Point Management Area an environment designation (not just an overlay), making the Industrial and Port Development also applicable in this area as those rules apply to all industrial and port development, and incorporating Council's similar adopted language from Title 20 into these regulations so that they are consistent (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 (LNTHPPO).

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)

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).

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.

WHATCOM COUNTY

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Mark Personius
Director

Memorandum

DATE: September 16, 2021
TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program (SMP) Periodic Update 2020

Today's Goals

On September 28th the Council will continue its review of the SMP Update.

Attachments

- **Exhibit E** – WCC Title 22
- **Exhibit G** –Shoreline Management Program Map.

All documents are available in pdf and Word versions on PDS's SMP Update webpage:

<https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>.

Amendments to Exhibit E (Title 22, Land Use & Development)

(Note: Topic #s refer to the topic number assigned in the Scoping Report)

#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 organizational changes is to move all permitting regulations to WCC Title 22. 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.).

#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.**

The Office of Financial Management (OFM) recalculates the dollar threshold for projects qualifying as exempt from having to obtain a substantial development permit process every 5 years. Staff considered deleting the dollar amount in §22.07.020(B)(1) and just referring to the most recent OFM updated amount, but felt it might be difficult for the public to track it down. Instead, the amount shown in the code has been updated to the most recent (2017) OFM calculation of \$7,047. Note, though, that PDS updates its permit application, website, and handouts to reflect OFM's newest threshold amount whenever it's published.

- 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) 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 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 and the cost threshold has been deleted from e definition of "substantial development" in §23.60.190 (Exhibit D).

#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).

- 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)

#4, Consistency with Land Use procedures (Title 22)

- a) Update SMP to align with recently adopted Title 22 permit procedures.**

All permitting procedures formerly in Title 23 (Exhibit D) have been moved to Title 22. 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).

#5, Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26)

- 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.

- 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.

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.

#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. They hired consultants specifically for this task, which was principally administered under a separate process. Under that separate process, the Council has already reviewed the amendments to C/P Ch. 2 (Land Use) and WCC Ch. 16.08 (SEPA) and none of those amendments affects the documents the Council is reviewing as part of this SMP Update. The Council's amendments to Title 22, however, have been incorporated into Exhibit E, and are being shown as existing as they have already been through that separate process.

Official Shoreline Environment Designation Map

Staff has updated the Shoreline Environment Designation Map as follows:

- 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 jurisdiction was expanded to rightly include all areas of the floodway and floodplain, as per code. This primarily expanded the Resource designation on the Nooksack from Ferndale to Lynden and portions of the South Fork of the Nooksack. Floodway and Floodplain are differentiated in the database.
- 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 do not need to update that report; the data is still valid.
- Shoreline designation breaks (thick black bars) have been removed from the map as they made it difficult to read.
- 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.

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Planning Commission Approved Draft
May 13, 2021

Exhibit D: Proposed Amendments to WCC Title 23

Shoreline Management
Program Periodic Update
2020

Whatcom County Planning and Development
Services

Planning Commission Approved Draft

SMP Update – Title 23 Amendments

May 13, 2021

Title 23 – Shoreline Management Program

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Chapter 23.10-05 Purpose and Intent General Provisions

23.1005.010 Authority.

Authority for enactment and administration of this program is the Shoreline Management Act of 1971, Chapter 90.58 RCW, also referred to herein as “the Act,” and the Washington Administrative Code 173-27 and 173-26.

23.1005.020 Purpose and Intent.

As provided in the Whatcom County Comprehensive Plan, Chapter 11 (Shorelines), Whatcom County’s shorelines provide valuable habitat for fish and wildlife, economic diversity, and recreational opportunities used by residents of all ages. Shorelines play an important role in enhancing the quality of life for our county’s citizens. Therefore, the purpose of the master program is to guide the future development of the County’s shorelines in a manner consistent with the Shoreline Management Act of 1971 (hereinafter referred to as the “Act”). The Act and this program, in conjunction with other County land use regulations, comprise the basic state and County law regulating use of shorelines in the county.

The purposes of this program are:

- A. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and
- B. To manage shorelines in a positive, effective, and equitable manner; and
- C. To further assume and carry out the responsibilities established by the Act for Whatcom County, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the state:
- D. It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State’s shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State...

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1 Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize,
2 insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any
3 interference with the public's use of the water.

Comment [CES1]: Moved to CompPlan.

4 ~~23.10.030 Governing principles.~~

Comment [MD2]: Moved to CompPlan.

5 The following principles along with the policy statements of RCW 90.58.020 establish basic concepts
6 that underpin the goals, policies and regulations of this program:

7 A. ~~Any inconsistencies between this program and the Act must be resolved in accordance with the Act.~~

8 B. ~~The policies of this program may be achieved by diverse means, one of which is regulation. Other~~
9 ~~means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements~~
10 ~~by purchase or gift, incentive programs, and implementation of capital facility and/or nonstructural~~
11 ~~programs.~~

12 C. ~~Protecting the shoreline environment is an essential statewide policy goal, consistent with other~~
13 ~~policy goals. Permitted and/or exempt development, actions taken prior to the Act's adoption,~~
14 ~~and/or unregulated activities can impair shoreline ecological processes and functions. This program~~
15 ~~protects shoreline ecology from such impairments in the following ways:~~

16 1. ~~By using a process that identifies, inventories, and ensures meaningful understanding of current~~
17 ~~and potential ecological functions provided by shorelines.~~

18 2. ~~By including policies and regulations that require mitigation of significant adverse impacts in a~~
19 ~~manner that ensures no net loss of shoreline ecological functions. The required mitigation shall~~
20 ~~include avoidance, minimization, and compensation of impacts in accordance with the policies~~
21 ~~and regulations for mitigation sequencing in WCC 23.90.030 and the Whatcom County critical~~
22 ~~areas ordinance (Chapter 16.16 WCC). This program and any future amendment hereto shall~~
23 ~~ensure no net loss of shoreline ecological functions and processes on a programmatic basis in~~
24 ~~accordance with the baseline functions present as of the date of adoption of this program,~~
25 ~~February 27, 2007.~~

26 3. ~~By including policies and regulations to address cumulative impacts, including ensuring that the~~
27 ~~cumulative effect of exempt development will not cause a net loss of shoreline ecological~~
28 ~~functions, and by fairly allocating the burden of addressing such impacts among development~~
29 ~~opportunities.~~

30 4. ~~By including regulations and regulatory incentives designed to protect shoreline ecological~~
31 ~~functions, and restore impaired ecological functions where such opportunities have been~~
32 ~~identified, consistent with the Shoreline Management Program Restoration Plan developed by~~
33 ~~Whatcom County.~~

34 D. ~~Regulation of private property to implement program goals such as public access and protection of~~
35 ~~ecological functions and processes must be consistent with all relevant constitutional and other~~
36 ~~legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and state~~
37 ~~Constitutions, recent federal and state case law, and state statutes, such as RCW 34.05.328 and~~
38 ~~43.21C.060 and Chapter 82.02 RCW.~~

39 E. ~~Regulatory or administrative actions contained herein must be implemented consistent with the~~
40 ~~public trust doctrine and other applicable legal principles as appropriate and must not~~

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unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.

F. The regulatory provisions of this program are limited to shorelines of the state, whereas the planning functions of this program may extend beyond the designated shoreline boundaries.

G. The policies and regulations established by the program must be integrated and coordinated with those policies and rules of the Whatcom County Comprehensive Plan and development regulations adopted under the Growth Management Act (GMA) and RCW 34.05.328.

H. Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance the various policy goals of this program giving consideration to other relevant local, state, and federal regulatory and non-regulatory programs.

~~23.10.04005.030~~ Title.

This title, taken together with Chapter 11 (Shorelines) of the Whatcom County Comprehensive Plan, shall be known and may be cited as "The Whatcom County Shoreline Management Program." Herein, this title together with Chapter 11 of the Comprehensive Plan may be referred to as the "SMP" or the "program."

~~23.10.050~~ Short title.

This title may be referred to herein as the "SMP," or the "program."

~~23.10.06005.040~~ Relationship to the Comprehensive Plan and other Federal, State, and County Codes and RegulationsReferences to plans, regulations or information sources.

A. Consistent with RCW 36.70A.480, the goals and policies of this program approved under Chapter 90.58 RCW are included as Chapter 11 (Shorelines) of the County's Comprehensive Plan. All regulatory elements of this program shall be considered a part of the County's development regulations.

B. Uses, developments, and activities regulated by this program may be independently subject to the Whatcom County Comprehensive Plan, the Whatcom County Code (WCC), the Washington State Environmental Policy Act, and various other federal, state, and county laws.

C. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional, or federal statutes or regulations applicable to such development or use. The responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question. The applicant must comply with all applicable laws prior to commencing any uses, development, or activity.

D. Should a conflict occur between the provisions of this program or between this program and the laws, regulations, codes, or rules promulgated by Whatcom County or any other authority having jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when constrained by federal or state law, or where specifically provided otherwise in this program.

E. Relationship to other County regulations.

1. Incorporation of the Whatcom County critical areas regulations, WCC Chapter 16.16, is addressed in WCC 23.05.065 (Critical Areas).

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1-2. The permitting procedures necessary for implementing this program are found in WCC Chapter 22 (Land Use and Development).

2.a. In the case of development subject to the shoreline permit requirement of this program, the County Building Official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit. All shoreline permits shall be obtained prior to issuance of a building permit; provided, that any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

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Comment [PDS3]: Simplified

3.b. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single-family residences, review for compliance with this Title may be completed as part of a building permit or non-shoreline permit, reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. Conditions of approval for compliance with Title shall be added to such permit. The conditions of approval shall be enforced with the provisions of this Title. 23.10.160 Violations, Enforcement and Penalties. The Building Official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).

Comment [PDS4]: Simplified.

a-c. In the case of zoning conditional use permits and/or variances, project permits are subject to consolidated review pursuant to Chapter 22.05 (Land Use and Development). Required by WCC Title 20 for development that is also within shorelines, the County-designated decision maker for such permits shall document compliance with bulk and dimensional standards as well as the policies and regulations of this program in consideration of recommendations from the administrator. The decision maker and shall attach conditions to such permits and variances approvals as required to make such development consistent with this program.

4. In the case of land divisions, such as short subdivisions, long plats, and planned unit developments that require County approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.

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Comment [CESS]: Don't need; subsection (c) amended to include all permits, including land division.

5.3. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:

- a. Building, plumbing, mechanical, and fire codes.
- b. Boating and swimming, WCC Title 11.
- c. On-site sewage system regulations, WCC Chapter 24.05.
- d. Solid waste rules and regulations, WCC Chapter 24.06.

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- e. Zoning, WCC Title 20.
 - f. Land division regulations, WCC Title 21.
 - g. Development standards.
- F. Relationship to other state, tribal, and federal regulations.
1. Where this program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.
 2. This program shall be applied consistent with all federal, state, and local laws affecting tribal rights.
 3. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.
- ~~6.4 Coastal Zone Management Act consistency reviews for sites within federal jurisdiction shall apply the shoreline environment designation criteria of Chapter 11 (Shorelines) of the Comprehensive Plan that most closely correspond to the project site in order to determine applicable program policies.~~
- ~~7. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional, or federal statutes or regulations applicable to such development or use.~~
 - ~~8. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~
- ~~9. Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the state of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's shoreline management program. A copy of the judgment is on file with the Whatcom County Planning and Development Services department.~~
- 23.1005.065 Critical Areas.
- A. The Whatcom County critical areas ~~ordinance regulations (CAO)~~, WCC Chapter 16.16 (Ordinance No. ~~2019-013~~ ~~2017-077~~, dated ~~February 12, 2019~~ ~~December 5, 2017~~), ~~is are~~ hereby adopted in whole as a part of this program, except that the provisions of WCC 16.16.270 (Reasonable Use Exceptions), 16.16.275 (Nonconforming Uses, Structures, and Lots), and 16.16.285 (Penalties and Enforcement) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), WCC Chapter 16.16, are for this specific version.
- ~~except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.~~

Comment [RCE6]: Moved from 23.60.080 (Notice of Application)

Comment [CES7]: Covered elsewhere.

Comment [CES8]: No longer needed as it no longer applies.

Comment [CES9]: To do: Will need to update this to the ordinance and date of the CAO we're amending as part of this update.

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B. ~~The adopted provisions of WCC Chapter 16.16 (Critical Areas) shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or statement of exemption is required.~~

~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with WCC Chapter 16.16 and this program.~~

23.1005.1240 Program Effects on Property Values.

A. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the County Assessor and the County Board of Equalization in establishing the fair market value of such properties.

B. Designation of private property as a natural or conservancy shoreline ~~area~~ environment pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Area Environment Designations) shall qualify the property as meeting the definition of “open space land” under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and WCC Chapter 3.28 (Open Space Land Classification).

23.1005.1350 Property Rights.

A. ~~Regulation of private property to implement program goals, such as public access and protection of ecological functions and processes, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, the protections afforded by the federal and state constitutions, and federal, state, and local laws.~~

~~A.B. Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings in issuing shoreline permits or statements of exemptions, the decision maker shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.~~

~~B.C. This program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner’s permission.~~

~~C.D. Consistent with Whatcom County’s high standard of staff conduct, County staff shall observe all applicable federal, and state, and County laws regarding entry onto privately owned property.~~

23.10.070 Liberal construction.

~~As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction; the Act and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this program were enacted and adopted, respectively.~~

23.1005.080 Severability.

The Act and this program adopted pursuant thereto, in conjunction with other applicable County land use regulations, comprise the basic state and County law regulating use of shorelines in the county. In the event provisions of this program conflict with other applicable County policies or regulations, the more restrictive shall prevail. Should any section or provision of this program be declared invalid, such decision shall not affect the validity of this program as a whole.

Comment [CES10]: Moved to 23.10.040 Code Interpretation

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- 1 **23.1005.090 Effective Date.**
- 2 This program and all amendments thereto shall become effective ~~14 days from immediately upon final~~
- 3 ~~approval and adoption by~~ the Department of Ecology ~~5 written notice of final action.~~

Comment [AP11]: Updated per Periodic Review Checklist, Item 2010.a, and Scoping Document, Item #1g.

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Comment [MD12]: All content in Chapter 23.20 moved to CompPlan.

Chapter 23.20 Goals and Objectives

23.20.005 Generally.

This chapter describes overall program goals and objectives. The general policies and regulations in Chapter 23.90 WCC and the specific use policies and regulations in Chapter 23.10 WCC are the means by which these goals and objectives are implemented.

23.20.010 Adoption.

In addition to the policy adopted in WCC 23.10.020(C), the following goals and objectives relating to the program elements specified in RCW 90.58.100(2) are hereby adopted. They provide the comprehensive foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based.

23.20.020 Economic development.

The economic development element provides for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent upon a shoreline location and/or use of the shorelines of the state.

A. Goal. To create and maintain an economic environment that can coexist harmoniously with the natural and human environment.

B. Objectives:

1. Encourage economic development that has minimal adverse effects and mitigates unavoidable impacts upon shoreline ecological functions and processes and the built environment.
2. Encourage shoreline development that has a positive effect upon economic and social activities of value to the region.
3. Encourage new water-dependent, water-related, and water-enjoyment economic development in priority order.
4. Encourage economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County.
5. Implement economic development policies contained in the Whatcom County Comprehensive Plan in shoreline areas consistent with this program and the Act.
6. Encourage new economic development to locate in areas that are already developed with similar uses.
7. Discourage expansion of existing development that is incompatible with this program, the character of the local area, or the Whatcom County Comprehensive Plan.

23.20.030 Public access.

The public access element provides for public access to publicly owned or privately owned shoreline areas where the public is granted a right of use or access.

A. Goal. To increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations; provided, that private rights, the public safety, and shoreline ecological functions and

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processes are protected consistent with the U.S. and state Constitutions, state case law, and state statutes.

~~B. Objectives.~~

- ~~1. Locate, design, manage and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.~~
- ~~2. Design and manage public access in a manner that ensures compatibility with water-dependent uses.~~
- ~~3. Where appropriate, acquire access to publicly owned tidelands and shorelands. Encourage cooperation among the county, landowners, developers, other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.~~
- ~~4. Provide and protect visual access to shorelines and tidelands.~~
- ~~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.~~
- ~~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.~~

~~A. Goal To provide opportunities and space for diverse forms of water-oriented recreation.~~

~~B. Objectives.~~

- ~~1. Locate, develop, manage, and maintain recreation areas in a manner that protects shoreline ecological functions and processes.~~
- ~~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 Comprehensive Park and Recreation Open Space Plan; the Whatcom County Bicycle Plan; and the Natural Heritage Plan.~~
- ~~3. Acquire additional recreation areas and public access areas with a high recreation value prior to demand to assure that sufficient shoreline recreation opportunities are available to serve future recreational needs.~~
- ~~4. Encourage cooperation among public agencies, nonprofit groups, and private landowners and developers to increase and diversify recreational opportunities through a variety of means including incorporating water-oriented recreational opportunities into mixed-use developments and other innovative techniques.~~
- ~~5. Recognize and protect the interest of all people of the state by providing increased recreational opportunities within shorelines of statewide significance and associated shorelands.~~
- ~~6. Encourage private and public investment in recreation facilities.~~

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~~7. Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.~~

~~23.20.050 Transportation and essential public facilities.~~

~~The transportation and essential public facilities element provides for the general location and extent of existing and proposed public thoroughfares, transportation routes, terminals, and other public utilities and facilities.~~

~~A. Goal. To provide transportation systems and essential public facilities in shoreline areas without adverse effects on existing shoreline use and development or shoreline ecological functions and/or processes.~~

~~B. Objectives:~~

~~1. Locate, develop, manage, and maintain transportation systems and essential public facilities in a manner that protects shoreline ecological functions and processes. Minimize and mitigate unavoidable impacts.~~

~~2. Locate and design transportation systems and essential public facilities to be harmonious with the existing and future economic and social needs of the community.~~

~~3. Discourage the development of non-water-dependent transportation systems and essential public facilities unless no feasible alternatives exist. Devote roads within the shoreline jurisdiction to low-volume local access routes and shoreline public access where feasible.~~

~~4. When appropriate, require adequate compensation where transportation systems and essential public facilities reduce the benefits people derive from their property.~~

~~5. Provide for alternate modes of travel, encourage freedom of choice among travel modes, and provide multiple use transportation corridors where compatible in association with shoreline transportation development.~~

~~6. Require transportation system and essential public facility development in shoreline areas to protect and enhance physical and visual shoreline public access.~~

~~23.20.060 Shoreline use.~~

~~The shoreline use element considers the use and development of shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, forestry, natural resources, recreation, education, public institutions, utilities and other categories of public and private land use with respect to the general distribution, location and extent of such uses and developments.~~

~~A. Goal. To preserve and develop shorelines in a manner that allows for an orderly balance of uses.~~

~~B. Objectives:~~

~~1. Give preference to water-dependent and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Give secondary preference to water-related and water-enjoyment uses. Allow non-water-oriented uses only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.~~

~~2. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health.~~

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3. ~~Ensure shoreline uses are consistent with the Whatcom County Comprehensive Plan.~~
4. ~~Balance the location, design, and management of shoreline uses throughout the county to prevent a net loss of shoreline ecological functions and processes over time.~~
5. ~~Encourage mixed-use developments that include and support water-oriented uses and provide a substantial public benefit consistent with the public access and ecological restoration goals and policies of the Act.~~
6. ~~Encourage shoreline uses and development that enhance shoreline ecological functions and/or processes or employ innovative features that further the purposes of this program.~~
7. ~~Encourage shoreline uses and development that enhance and/or increase public access to the shoreline.~~

~~23.20.070 Conservation.~~

~~The shoreline conservation element provides for the protection of natural resources, and shoreline ecological functions and processes. Resources to be conserved and protected include, but are not limited to, wetlands, riparian, nearshore, and aquatic habitats; priority fish and wildlife habitats and species; floodplains; feeder bluffs and other geological features; cultural and historic resources; as well as scenic vistas and aesthetics.~~

~~A. Goal. To conserve shoreline resources and important shoreline features, and protect shoreline ecological functions and the processes that sustain them to the maximum extent practicable.~~

~~B. Objectives.~~

1. ~~Develop regulations and mitigation standards that ensure new shoreline developments prevent a net loss of shoreline ecological functions and processes. Implement such regulations and standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.~~
2. ~~Protect critical areas in accordance with the policies and regulations in Chapter 16.16 WCC.~~
3. ~~Manage renewable natural resources on a sustained yield basis. Extract nonrenewable natural resources in a manner that maintains the quality of other resources and shoreline ecological functions and processes.~~
4. ~~Prioritize protection and/or conservation of shoreline areas that are ecologically intact and minimally developed or degraded.~~

~~23.20.080 Archaeological, historical and cultural resources.~~

~~The archaeological-historical-cultural element provides for protection, preservation and/or restoration of buildings, sites, and areas having archaeological, historical, cultural, or scientific value or significance.~~

~~A. Goal. Protect shoreline features of historic, cultural, archeological, or scientific value or significance to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.~~

~~B. Objectives.~~

1. ~~Protect sites in collaboration with appropriate tribal, state, federal and local governments. Encourage public agencies and private parties to cooperate in the identification, protection and management of cultural resources.~~

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- ~~2. Where appropriate, make access to such sites available to parties of interest; provided, that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.~~
- ~~3. Provide opportunities for education related to archaeological, historical and cultural features where appropriate and incorporated into public and private programs and development.~~

~~23.20.090 Views and aesthetics.~~

~~This element provides for preservation and/or protection of scenic vistas, views of the water, and other aesthetic qualities of shorelines for public enjoyment.~~

~~A. Goal. To assure that the public's ability and opportunity to enjoy shoreline views and aesthetics is protected.~~

~~B. Objectives.~~

- ~~1. Identify and protect areas with scenic vistas and areas where the shoreline has high aesthetic value.~~
- ~~2. Design development to minimize adverse impacts on views from public property or views enjoyed by a substantial number of residences.~~

~~23.20.100 Restoration and enhancement.~~

~~This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this program.~~

~~A. Goal. To reestablish, rehabilitate and/or otherwise improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public and private programs and actions that are consistent with the Shoreline Management Program Restoration Plan (County Resolution 2007-011) and other approved restoration plans.~~

~~B. Objectives.~~

- ~~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.~~
- ~~2. Restore and enhance shoreline ecological functions and processes as well as shoreline features through voluntary and incentive-based public and private programs.~~
- ~~3. Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.~~
- ~~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.~~
- ~~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.~~

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Chapter 23.05-10 Administrative ~~Procedures~~Provisions

23.10.010 Authorization.

RCW 90.58.140(3) requires local governments to establish a program, consistent with the rules adopted by Ecology, for the administration and enforcement of shoreline development. Also, in accordance with RCW 90.58.050, which provides that this program is intended to establish a cooperative program between Whatcom County and the state. Whatcom County shall have the primary responsibility for administering the regulatory program, and Ecology shall act primarily in a supportive and review capacity, in accordance with RCW 90.58.050.

23.10.100-020 Application to persons and developmentApplicability.

A. Unless specifically exempted by statute, or as excluded below, this program shall apply to any person, as defined in WCC Chapter 23.110. This program shall apply to any proposed development, use, or activity development as defined in WCC Chapter 23.110. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC, occurring within shoreline jurisdiction. Such development, use, or activity must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program whether or not a permit is required.

B. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with this program, including WCC Chapter 16.16 (Critical Areas).

B.C. No substantial development as defined in WCC Chapter 23.110 shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 22.07.020 (Exemptions from Shoreline Substantial Development Permits) 23.60.022.

D. All developments, uses and development activities on shorelines shall be subject to the policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines) and regulations of this program in addition to any other applicable regulations of the Whatcom County Code; provided, that all use and development that is to be located within the Cherry Point Management Area, as defined in Chapter 23.90 WCC, shall be subject to the regulations found in WCC 23.40.210 only, and shall not be subject to the regulations found in this chapter and Chapter 23.40 WCC unless otherwise specified.

E. Application within Federal Reserves or Lands.

1. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of RCW Chapter 90.58 (SMA).
2. As recognized by RCW 90.58.350, nothing in this program shall affect any rights established by treaty to which the United States is a party.
3. The Act and this program, including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal

Comment [AP13]: Moved sections 23.10.100 – 150 here from 23.50.

Comment [DN14]: This text is required per WAC 173-26-191(2)(a)(iii)(A).

Comment [CES15]: Covered by 23.40.115 (CPMA)

Comment [AP16]: Moved from 23.30.010 – General Regulations

Comment [AP17]: Updated per Periodic Review Checklist, Item 2017.f, and Scoping Document, Item #2c.

Comment [CES18]: From WAC 90.58.350.

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ownership, lease, or agreement, even though such lands may fall within the external boundaries of a federal ownership.

F. Direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this master program as required by WAC 173-27-060.

G. This master program shall apply to all unincorporated urban lands until such time as a city meets the requirements of WAC 173-26-150 or 173-26-160 for pre-designation of urban growth areas (UGAs) or amends its master program as appropriate.

H. This program shall not apply to:

1. 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.

2. Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

3. The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.

I. Pursuant to RCW 90.58.140(12), a permit is not required in order to dispose of dredged materials at a disposal site approved through the cooperative planning process referenced in RCW 79.105.500, provided the dredged material disposal proponent obtains a valid site use authorization from the Dredged Material Management Program office within the Department of Natural Resources.

~~23.10.180-030 Administration~~ Administrative Duties.

A. The Director is hereby ~~vested with the~~ authorized to:

1. Administer this program.
2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to WCC Title 22 (Land Use and Development) 23-60-130.
3. Grant or deny statements of exemption.
4. Authorize, approve, or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.
5. Enforce the code pursuant to WCC 23.10.160 (Violations, Enforcement, and Penalties), including ~~issuing a stop work orders~~ pursuant to the procedure set forth in WAC 173-27-270 and this program, upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW or this program; and seek remedies for alleged violations of this program's regulations, or of the provisions of the Act, or of conditions ~~of approval for attached to a all project permits with shoreline permit~~ conditions of approval for consistency with this program issued by Whatcom County.

Comment [CES19]: Added per Periodic Review Checklist, Item 2017 c, and Scoping Document, Item #1c: Update to fully cover the exceptions in WAC 173-27-044 and -045 to satisfy required legislative amendment.

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6. Decide whether or not a proposal is subject to the consolidated review process of Chapter WCC 22.05 (Land Use and Development) and determine what other permits are required to be included in the consolidated review.
7. Make field inspections as needed, and prepare or require reports on a shoreline permit or statement of exemption applications.
8. Make written recommendations to the County Council or Hearing Examiner as appropriate and, insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.
9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this program.
10. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this program.
11. Collect fees as provided for in WCC Title 22 (Land Use and Development) 23.60.070, and
12. Assure that proper notice is given to interested persons and the public through news media, posting, or mailing of notices required by Title 22 (Land Use and Development).
13. Review administrative and management policies, regulations, plans, and ordinances relative to lands under County jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this program.
14. Review and evaluate the records of project review actions in shoreline environments and report on the cumulative effects of authorized development of shoreline conditions. The Director shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested parties.
- ~~15. Make recommendations to the Planning Commission for open space tax designations pursuant to Chapter 84.34 RCW.~~
- ~~16.15. Develop administrative guidance materials related to the interpretations of principles and terms in this program as required to provide for consistent and equitable implementation of this program. Such administrative guidance documents shall be developed in consultation with the provided to Washington State Department of Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of Chapter 90.58 RCW, the applicable guidelines, and the goals and objectives of this program.~~
- B. The Whatcom County Planning Commission is hereby vested with the responsibility to periodically review the program as a major element of the County's planning and regulatory program, and make recommendations for amendments thereof to the County Council.
- C. The Whatcom County Council is hereby vested with authority to:
 1. Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100.
 2. Adopt all amendments to this program, after consideration of the recommendation of the Planning Commission and pursuant to the procedural requirements of WCC Chapter 2.02; provided, that substantive amendments shall become effective 14 days from immediately upon adoption by the Department of Ecology's written notice of final action.

Comment [PDS20]: Not relevant to SMP

Comment [CES21]: Moved from 23.70.040

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3. Make final County decisions or recommendations, as applicable, with regard to shoreline permit, shoreline variance, or shoreline conditional use applications that require County Council action on a consolidated review as provided by WCC Chapter 22.05.

Comment [CES22]: Moved from 23.70.050

~~23.05.010 Authority.~~

~~As described in adopted Whatcom County Ordinance 2008-034, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this program. They are, however, included with the text of this title for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.~~

~~The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:~~

~~Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.~~

~~23.05.020 Purpose.~~

~~The purpose of the chapter is to allow Whatcom County to revise local administrative procedures (fees, application meetings, authority of administrator, etc.) without a formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.~~

~~23.05.030 Administrative procedures.~~

~~A. All applications for project permits covered by this title shall be reviewed and processed in accordance with Chapter 22.05 WCC, except as otherwise stated within this title.~~

~~B. The following administrative sections and chapters were adopted by the Whatcom County Administrative Procedures Ordinance 2008-034, and are separate from this title:~~

- ~~— WCC 23.60.050 — Minimum application requirements.~~
- ~~— WCC 23.60.060 — Pre-application conference.~~
- ~~— WCC 23.60.070 — Fees.~~
- ~~— WCC 23.60.080 — Notice of application.~~
- ~~— WCC 23.60.090 — Permit application review.~~
- ~~— WCC 23.60.100 — Consolidated permit review.~~
- ~~— WCC 23.60.110 — State Environmental Policy Act (SEPA) compliance.~~
- ~~— WCC 23.60.130 — Public hearings.~~
- ~~— WCC 23.60.140 — Permit conditions.~~
- ~~— WCC 23.60.150 — Notice of decision, reconsideration and appeal.~~
- ~~— WCC 23.60.160 — Initiation of development.~~

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- ~~WCC 23.60.180 – Rescission and modification.~~
- ~~WCC 23.60.190 – Expiration.~~
- ~~Chapter 23.70 WCC – Administration.~~
- ~~Chapter 23.80 WCC – Legal Provisions.~~

~~23.10.110 Relationship to other local regulations.~~

Comment [AP23]: Moved to WCC 23.10.060.

- ~~A. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.~~
- ~~B. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single-family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).~~
- ~~C. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.~~
- ~~D. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.~~
- ~~E. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:~~
 - ~~1. Building, plumbing, mechanical, and fire codes.~~
 - ~~2. Boating and swimming, WCC Title 11.~~
 - ~~3. On-site sewage system regulations, Chapter 24.05 WCC.~~
 - ~~4. Solid waste rules and regulations, Chapter 24.06 WCC.~~
 - ~~5. Zoning, WCC Title 20.~~
 - ~~6. Land division regulations, WCC Title 21.~~
 - ~~7. Development standards.~~

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~~23.10.120 Relationship to other state and federal laws.~~

Comment [AP24]: Moved to 23.10.060.

- ~~A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~
- ~~B. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~
- ~~C. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~1. Flood Control Zone Act, Chapter 86.16 RCW.~~
 - ~~2. Forest Practices Act, Chapter 76.09 RCW.~~
 - ~~3. Fish and Wildlife, RCW Title 77.~~
 - ~~4. Water Pollution Control Act, Chapter 90.48 RCW.~~
 - ~~5. Land Subdivision Act, Chapter 58.17 RCW.~~
 - ~~6. Surface Mining Act, Chapter 78.44 RCW.~~
 - ~~7. Washington Clean Air Act, Chapter 70.94 RCW.~~
 - ~~8. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.~~
 - ~~9. Camping Resorts Act, Chapter 19.105 RCW.~~
 - ~~10. Water Resources Act of 1971, Chapter 90.54 RCW.~~
 - ~~11. Growth Management Act, Chapter 36.70A RCW.~~
 - ~~12. State Hydraulic Code, Chapter 77.55 RCW.~~
- ~~D. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~1. Northwest Clean Air Agency regulations.~~
 - ~~2. Puget Sound Water Quality Management Plan.~~
- ~~E. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
- ~~1. Rivers and Harbors Act of 1899.~~
 - ~~2. Fish and Wildlife Coordination Act of 1958.~~
 - ~~3. National Environmental Policy Act of 1969 (NEPA).~~
 - ~~4. Coastal Zone Management Act of 1972, as amended.~~
 - ~~5. Federal Water Pollution Control Act, as amended.~~
 - ~~6. Flood Insurance Act of 1968, as amended.~~
 - ~~7. Clean Air Act, as amended.~~
 - ~~8. Endangered Species Act (ESA).~~

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~~23.10.1310 Application within federal reserves.~~

~~A. As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~

Comment [CES25]: Moved to 23.10.020, Applicability

23.10.040 Code Interpretation.

A. The regulations of this Program shall be interpreted to allow the development, use, or activity as described in the General Regulations and/or Specific Use Regulations only when the proposal is designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes.

B. The policies of Chapter 11 (Shorelines) of the Comprehensive Plan shall guide interpretation of the regulations.

C. Conflict between the provisions of the this Program and the WACs implementing the Act must be resolved in accordance with the WACs; provided that conflict between the provisions of the WACs implementing the Act and the Act must be resolved in accordance with the Act.

D. In case of conflict between the provisions of this program and Whatcom County Code or the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when constrained by federal or state law.

E. As provided for in RCW 90.58.900, the Act is exempt from the rule of strict construction, and this program, including these regulations, shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies of the Act for which this program was enacted and adopted, respectively.

F. Within shoreline jurisdiction, the regulations of WCC Chapter 16.16 adopted pursuant to 23.05.065 (Critical Areas) shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act.

23.10.050 Shoreline Permits Required.

A. To be authorized, all shoreline development, uses, or activities shall be done in a manner consistent with this program and the Shoreline Management Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

B. The applicable provisions of WCC Title 22 (Land Use and Development) shall govern the processing of permits required under this Title. If any conflict should exist between Title 22 and this program, the provisions of this program shall prevail.

23.10.160 Violations, Enforcement, and Penalties.

A. The Director, when necessary in consultation with the Department of Ecology, is authorized to adopt such rules as are necessary and appropriate to carry out the provisions of the Shoreline Management Act (RCW 90.58.200) and Chapter 173-27 WAC, Part II. The Act calls for a cooperative program between local government and the state. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.

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- 1 B. In addition to the following provisions, this Title shall be enforced in accordance with WCC Chapter
2 20.94 (Enforcement and Penalties) and WAC 173-27-240 through 173-27-300 or their successors.
3 C. To achieve no net loss, if a development, use, or activity has occurred in violation of this program,
4 prompt restoration or mitigation of any adverse impacts shall be provided. The standard mitigation
5 ratio for the critical area or buffer impacts shall be doubled to address temporal loss when
6 appropriate. If this provision is not complied with, the County may restore or mitigate the site and
7 charge the responsible person for the full cost of such an activity. Additionally, any and all permits or
8 approvals issued by the County may be denied for that property for a period of up to six years.
9 D. Any responsible party that willfully refuses to complete a required restoration plan pursuant to this
10 section shall be guilty of a misdemeanor and, in addition to the requirement of subsection (C), shall
11 provide shoreline restoration equal to double the square footage of the impacted area.
12 E. Pursuant to WCC 22.05.150 (Permit Revocation), the County may revoke a permit if the applicant
13 violates the conditions or limitations set forth in the permit or exceeds the scope of the work set
14 forth in the permit.

~~23.80.040~~ 23.10.170 Abatement.

15 Structures or development on shorelines considered by the ~~administrator~~ Director to present a hazard
16 or other public nuisance to persons, properties, or natural features may be abated by the County under
17 the provisions of WCC Title 15 (Buildings & Construction) and WCC Chapter 22.15 (Code
18 Enforcement) ~~the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings,~~
19 ~~1997 Edition, or successor as adopted by Whatcom County,~~ or by other appropriate means.

~~23.80.040~~ 23.10.180 Financial Sureties.

20 In approving any application or exemption for a shoreline development, the Director may require the
21 posting of a financial surety to ensure continued compliance with any conditions imposed, including the
22 construction of improvements, the adherence to County standards, and/or maintenance, repair or
23 replacement of such improvements. The financial surety shall be in a form acceptable to the County's
24 attorney. In the event a condition occurs warranting the use of financial surety, the Director may act
25 under such financial surety or may perform the work required at the County's expense, which expense
26 shall be a lien against the property, enforceable as would be a judgment thereon.

Comment [CES26]: Added. Though we use financial sureties to ensure performance, there was no authorizing language in the SMP.

~~23.80.040~~ 23.10.190 Amendments.

- 27 A. Amendments to the Shoreline Management Program—including both Comprehensive Plan policies
28 and Title 23 regulations—shall be processed pursuant to WCC Chapter 22.10 (Legislative Action
29 Procedures).
30 B. All regulatory elements of this Program shall be considered a part of the County's development
31 regulations. Certain non-regulatory elements of this master program, including but not limited to
32 the Shoreline Restoration Plan or administrative procedures (WCC Title 22), may be updated and
33 amended at any time without requiring a formal master program amendment.
34 C. After approval or disapproval of a program amendment by the Department of Ecology as provided in
35 RCW 90.58.090, the County shall publish a notice that the program amendment has been approved
36 or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of
37
38
39

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1 publication for the amendment of a program is the date the County publishes notice that the
2 program amendment has been approved or disapproved by the Department of Ecology.
3 A.D. The Director shall submit an annual report to the County Council reviewing the effectiveness of
4 the program in achieving its stated purpose, goals, and objectives. Such report may also include any
5 proposed amendments deemed necessary to increase its effectiveness or equity. If said report
6 contains proposed amendments, the Council may schedule a public hearing to consider such matter
7 in accordance with the procedure described in subsection (A). Said report shall also include a
8 determination of whether or not the goal of no net loss of shoreline ecological function is being
9 achieved and provide recommendations for achieving and maintaining the goal.

Chapter 23.230 Shoreline Jurisdiction and ~~Area~~ Environment Designations

23.230.010 Shoreline Jurisdiction.

A. The provisions of this program shall apply to all shorelines of the state in unincorporated Whatcom County, including all shorelines of statewide significance ~~(Appendix D of this title)~~ and all shorelands ~~as defined in WCC Chapter 23.110~~ and collectively referred to herein as “shorelines.” For the purposes of this program, jurisdictional shorelines are divided into segments or reaches. Each segment is assigned one or more shoreline ~~environment~~ area designations pursuant to this chapter in order to provide for the management of use and development within shorelines.

B. ~~The shoreline master program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes:~~

- ~~1. All marine waters;~~
- ~~2. Rivers and streams with more than twenty cubic feet per second (cfs) mean annual flow;~~
- ~~3. Lakes and reservoirs twenty acres and greater in area;~~
- ~~4. Floodways and contiguous floodplain areas landward two hundred feet from such floodways; and.~~
- ~~5. All associated wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Act;~~
- ~~6. Shorelands adjacent to these waterbodies, typically within two hundred feet of the ordinary high water mark (OHWM);~~
- ~~7. Buffers necessary to protect critical areas that are located within shoreline jurisdiction as described in this program.~~
- ~~8. Associated estuarine wetlands: the jurisdictional boundary shall extend two hundred feet landward of the OHWM of the wetland.~~
- ~~9. Associated palustrine wetlands that extend greater than two hundred feet landward of the OHWM of the shoreline: the jurisdictional boundary shall extend to the OHWM of the wetland.~~
- ~~10. Critical areas designated pursuant to Chapter 36.70A RCW and located within shoreline jurisdiction shall be subject to the regulations of this program.~~

Comment [CES27]: From RCW 90.58.030(2)(f) and DOE SMP Handbook.

23.20.020 ~~23.230.020~~ Official Shoreline Map.

A. ~~As part of this program, there is one official Whatcom County shoreline environment designations map, which shall be in the custody of the Planning and Development Services Department and available for public inspection during normal business hours and on the Whatcom County website. Unofficial copies of the official map or portions thereof may be included or distributed with copies of this program. Shoreline Area Designations. Shoreline area designations are delineated on a map, hereby incorporated as a part of this program (Appendix E of this title) that shall be known as the Official Shoreline Map. There shall be only one official copy of this map that shall reside in the custody of the Washington State Department of Ecology. Additional copies have been provided to the Whatcom County auditor and the Whatcom County planning and development services department where they are available for public use.~~

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- 1 B. ~~The purpose of the official shoreline environment designations map is to depict graphically those~~
2 ~~areas of Whatcom County falling under the jurisdiction of this program, and the shoreline~~
3 ~~environment designations of those areas. Shoreline Jurisdictional Limits. The purpose of the Official~~
4 ~~Shoreline Map is to identify shoreline area designations.~~ The map does not necessarily identify or
5 depict the lateral extent of shoreline jurisdiction nor does it identify all associated wetlands. The
6 lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the
7 location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands;
8 ~~provided, that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline~~
9 ~~jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the~~
10 ~~Nooksack River.~~
- 11 C. Where questions arise regarding the precise boundaries of any shoreline designation, the Director
12 will make the final determination following the guidance of 23.20.030 (Interpretation of Official Map
13 Boundaries) and 23.20.040 (Mapping Errors). Appeals of such interpretations may be filed pursuant
14 to WCC 22.05.160 (Appeals).
- 15 D. All shorelines waterward of the OHWM shall be designated aquatic, except that in the Cherry Point
16 Management Area the aquatic designation shall start waterward of the CPMA boundary (see
17 subsection E).
- 18 E. The Cherry Point Management Area is a geographic area lying between the eastern property
19 boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1
20 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North,
21 Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as
22 measured on a horizontal plane from the OHWM. This area shall have the Cherry Point Management
23 Area shoreline environment designation.
- 24 F. Upland shoreline environment designations shall apply to shorelands, unless specifically stated to be
25 applied to the aquatic designation by this program.
- 26 F.G. Only one shoreline environment designation shall apply to a given shoreland area. In the case of
27 designations running parallel to one another (as along the coast), designations shall be divided along
28 an identified linear feature. Such linear features shall be clearly noted in the metadata associated
29 with the Official Shoreline Map.
- 30 G.H. All shorelines east of the Mount Baker National Forest western boundary are designated natural
31 or conservancy unless there are federal projects on federal lands.
- 32 H.I. All areas within shorelines that are not mapped and/or designated and are not directly adjacent to
33 other shoreline designated areas are automatically assigned a conservancy designation. Within
34 urban growth areas, such shorelines shall be automatically assigned an urban conservancy
35 designation until such time that the shoreline environment can be re-designated through a formal
36 amendment.
- 37 ~~23.3020.021-030 Interpretation of shoreline area designation boundaries~~ Official Map Boundaries.
38 Where the exact location of an environment designation boundary line is uncertain, the official
39 shoreline environment designations map will be used to determine the location of such line. When

Comment [PDS28]: Should be based existing conditions

Comment [CES29]: Moved from "Interpretation of Map" section, below.

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resorting to the shoreline environment designations map does not resolve the conflict, the following rules will apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, alleys, or other roadways, or railroads shall be construed to follow the nearest right-of-way edge;
2. Boundaries indicated as approximately following lot, fractional section, or other subdivision lines shall be construed as following such subdivision lines;
3. Boundaries indicated as approximately following any lines of corporate limits or other local government jurisdictional lines shall be construed as following such lines;
4. Boundaries indicated as parallel to or extensions of features identified in subsections (1) through (3) of this section shall be so construed; and
5. Boundaries between parallel environment designations along the shoreline shall be construed as the top of the bluff or vegetation line that distinguishes existing development from the critical area abutting the shoreline.

When not specifically indicated on the shoreline environment designations map, distances shall be determined by the scale of the map;

Where existing physical or cultural features are at variance with those shown on the shoreline environment designations map and cannot be determined with certainty by applying subsections (A)(1) through (6) of this section, the director shall determine the location or existence of such feature utilizing the provisions of WAC 173-27-211, the policies of RCW 90.58.020, and the corresponding master program provisions herein; and

If disagreement develops as to the exact location of a shoreline area designation boundary line, the Official Shoreline Map shall prevail;

If disagreement develops as to the exact location of a shoreline area designation boundary line, the following rules shall apply:

Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.

Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines.

Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (B)(1) or (2) of this section shall be so construed.

Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the administrator shall interpret the boundaries. Appeals of such interpretations may be filed pursuant to WCC 23.60.150(H).

All shoreline area waterward of the OHWM shall be designated aquatic.

Upland shoreline area designations shall apply to shorelands.

Only one shoreline area designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature. Such linear features shall be clearly noted in the metadata associated with the Official Shoreline Map.

All shorelines east of the Mount Baker National Forest western boundary are designated conservancy unless there are federal projects on federal lands.

All areas within shorelines that are not mapped and/or designated are automatically assigned a conservancy designation. Within urban growth areas, such shorelines shall be automatically

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~~assigned an urban conservancy designation until such time that the shoreline area can be re-designated through a formal amendment.~~

Comment [CES30]: Moved to 23.20.020 Official Map section

23.20.040 Mapping Errors

Some mapping errors may be adjusted prior to a master program amendment to assign the appropriate designation to that area by the following methods:

1. The common boundary descriptions and the criteria in RCW 90.58.030(2) and Chapter 173-22 WAC supersede the map when there are mapping error conflicts, other than those with a solution provided in this section.
2. In the event that a jurisdictional area, including associated wetlands, is not mapped, it will automatically be assigned a "resource," "conservancy," or "urban conservancy" designation depending on its location. If outside a UGA and adjacent to an existing "resource" designation, it shall be "resource;" if adjacent to "conservancy" it shall be "conservancy. If outside or inside of a UGA or LAMIRD it shall be "urban conservancy." Such designation will apply until a master program amendment is approved that assigns the appropriate designation to the subject area.
3. In the event that a parcel was inadvertently assigned more than one designation, the more restrictive designation shall apply.
4. In the event that a parcel on the boundary between two designations appears to be a mapping error based on the criteria in this section, the County shall apply the most appropriate of the two designations, until such time as the map can be formally corrected consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment).
5. In the event of an environment designation mapping error where the master program update or amendment record, including the public hearing process, is clear in terms of the correct environment designation to apply to a property, the County shall apply the environment designation approved through the master program update or amendment process and correct the map.
6. If the environment designation criteria were misapplied, but the update or amendment record, including the public hearing process, does not clearly show that a different designation was intended to be shown on the map, a master program amendment may be obtained consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment). This process is intended to allow for reasonable corrections to the shoreline environment designation process. Such process shall include early consultation with the Department of Ecology and other agencies with jurisdiction, affected tribes, and appropriate public notification prior to local approval. Current designations are reflected in the shoreline environment designations map located pursuant to WCC Chapter 23.20 (Shoreline Jurisdiction and Environment Designations).

23.20.020-050 Shoreline Area Environment Designations.

- ~~A. A set of 10 shoreline area designations has been developed as a part of this program. The purpose of the shoreline area designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches.~~
- ~~B. Shoreline area designations have been determined after consideration of:~~

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1. ~~The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; and~~
2. ~~Existing development patterns together with WCC Title 20, Zoning, designations, the County Comprehensive Plan designations 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 Act and the Shoreline Master Program Guidelines (RCW 90.58.020 and Chapter 173-26 WAC, respectively).~~

Comment [MD31]: Moved to CompPlan.

A. Development, use and activities use within each designated shoreline ~~area~~ environment shall occur consistent with ~~the SMP this program~~, including but not limited to: the shoreline environment designation purpose, designation criteria, and policies ~~described found in Whatcom County Comprehensive Plan Chapter 11 (Shorelines) below;~~ the general policies and regulations contained in Chapter 11 (Shorelines) and WCC Chapter 23.390 (General Regulations), and the use and modification policies and regulations provided in Chapter 11 (Shorelines) and WCC Chapter 23.440 (Shoreline Use and Modification Regulations), subject to the provisions of the ~~Whatcom County Zoning Code~~, WCC Title 20 (Zoning), and other applicable land use regulations where more restrictive.

B. Shoreline environment designations in Whatcom County include the following:

1. Urban
2. Urban Resort
3. Urban Conservancy
4. Shoreline Residential
5. Rural
6. Resource
7. Conservancy
8. Natural
9. Aquatic
10. Cherry Point Management Area

Comment [CES32]: Policy Change. The existing SMP treats the SPMA as a sort of overlay designation. Based on Council's recent actions regarding this area, staff is proposing that it be given its own environment designation.

~~23.3020.023-060~~ Designation of Shorelines of Statewide Significance.

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of unincorporated Whatcom County, including the shorelands and associated wetlands as therein defined, as having statewide significance:

A. Lakes:

1. Lake Whatcom;
2. Ross Lake; and
3. Baker Lake.

B. Rivers:

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1. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork upstream to the mouth of Glacier Creek, and its South Fork upstream to the mouth of Hutchinson Creek.
 2. Skagit River: upstream of the Whatcom-/Skagit County line to the point where the mean annual flow is measured at 1,000 feet per second or more, approximately, at the confluence of Newhalem Creek.
- C. Marine:
1. Birch Bay from Birch Point to Point Whitehorn.
 2. All other marine waters, water columns, and bedlands waterward of extreme low tide.

~~23.30.030 Urban shoreline area.~~

~~23.30.031 Urban shoreline area – Purpose.~~

The purpose of the urban shoreline area is to provide for intensive development of water-oriented commercial, transportation, and industrial uses and accommodate mixed-use developments such as those consisting of urban density residential, commercial and industrial uses, while protecting existing shoreline ecological functions and processes and restoring shoreline ecological functions and/or processes in areas that have been previously degraded.

~~23.30.032 Urban shoreline area – Designation criteria.~~

The urban shoreline area is applied to shoreline areas zoned commercial, industrial and urban density residential within urban growth areas and limited industrial or commercial areas of more intense rural development, if they:

- 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:

- A. New urban character development should be directed toward already developed or developing areas where compatible.
- 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.

~~23.30.034 Urban shoreline area – Permitted uses.~~

The following uses may be permitted subject to the applicable policies and regulations of this program:

- A. Residential.
- B. Water-oriented commercial, industrial and/or port development.

Comment [CES33]: The remainder of this chapter has been moved to either the CompPlan (in the case of purpose statements, designation criteria, and policies) or the amended Table 2 (Shoreline Use Table) (in the case of use permissions) so as to make it easier to find all such regulations.

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~~C. Water-oriented recreation.~~

~~D. Agricultural.~~

~~23.30.035 Urban shoreline area – Conditional uses.~~

~~The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A. Non-water-oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(8)(1)(d) and 23.100.070(8)(1)(c)(iv), respectively.~~

~~B. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~23.30.036 Urban shoreline area – Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Forest practices.~~

~~B. Surface mining.~~

~~23.30.040 Urban resort shoreline area.~~

~~23.30.041 Urban resort shoreline area – Purpose.~~

~~The purpose of the urban resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes. Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline-related recreation facilities.~~

~~23.30.042 Urban resort shoreline area – Designation criteria.~~

~~The urban resort shoreline area is applied to shoreline areas identified in the Comprehensive Plan as suitable for resort commercial development with substantial features that might reasonably attract resort development compatible with other development in the area, and which have existing and/or planned infrastructure sufficient to support such development.~~

~~23.30.043 Urban resort shoreline area – Policies.~~

~~Development within urban resort shoreline areas shall be consistent with the following policies:~~

~~A. Scale and design of resort development should assure compatibility with allowed uses of adjacent shoreline areas and shoreline ecological functions and processes.~~

~~B. Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.~~

~~23.30.044 Urban resort shoreline area – Permitted uses.~~

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~A. Residential.~~

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- 1 ~~B. Water-oriented commercial.~~
- 2 ~~C. Port development, limited to passenger terminals.~~
- 3 ~~D. Water-oriented recreation.~~
- 4 **23.30.045 Urban resort shoreline area – Conditional uses.**
- 5 ~~The following may be permitted as conditional uses subject to the applicable policies and regulations of~~
- 6 ~~this program:~~
- 7 ~~A. Non-water-oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~
- 8 ~~B. Institutional development and essential public facilities, where there is no feasible location outside~~
- 9 ~~the shoreline.~~
- 10 ~~C. Transportation facilities not serving a specific approved use, including roads, railways, and parking~~
- 11 ~~areas, provided there is no feasible location outside the shoreline.~~
- 12 ~~D. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization~~
- 13 ~~facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local~~
- 14 ~~distribution, provided there is no feasible location outside the shoreline.~~
- 15 **23.30.046 Urban resort shoreline area – Prohibited uses.**
- 16 ~~The following uses are prohibited:~~
- 17 ~~A. Agricultural.~~
- 18 ~~B. Forest practices.~~
- 19 ~~C. Surface mining.~~
- 20 ~~D. All other industrial and port development.~~
- 21 **23.30.050 Urban conservancy shoreline area.**
- 22 **23.30.051 Urban conservancy shoreline area – Purpose.**
- 23 ~~The purpose of the urban conservancy shoreline area is to protect shoreline ecological functions and~~
- 24 ~~processes in urban growth areas and limited areas of more intense rural development that are not~~
- 25 ~~designated for high intensity residential use and are not generally suitable for water-dependent uses.~~
- 26 **23.30.052 Urban conservancy shoreline area – Designation criteria.**
- 27 ~~The urban conservancy shoreline area is applied to shoreline areas inside urban growth areas where any~~
- 28 ~~of the following characteristics apply:~~
- 29 ~~A. They support or retain important shoreline ecological functions and/or processes, even though~~
- 30 ~~partially developed.~~
- 31 ~~B. They have the potential for development at an intensity and character that is compatible with~~
- 32 ~~preserving and restoring ecological functions. They are generally not designated for high intensity~~
- 33 ~~residential use, commercial use, or industrial use.~~
- 34 ~~C. They are characterized by critical areas or indicate the presence of other valuable or sensitive~~
- 35 ~~ecological resources.~~
- 36 **23.30.053 Urban conservancy shoreline area – Policies.**
- 37 ~~Development within urban conservancy shoreline areas shall be consistent with the following policies:~~

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- 1 ~~A. Primary permitted uses should consist of low-intensity residential uses or other low-intensity uses~~
2 ~~that preserve the natural character of the area or promote preservation of open space and critical~~
3 ~~areas.~~
4 ~~B. Moderate to high-intensity residential use may be permitted if the proposed uses and design result~~
5 ~~in substantial open space, public access and/or restoration of shoreline ecological functions and/or~~
6 ~~processes, and if compatible with surrounding uses.~~
7 ~~C. Public access and public recreation facilities are a preferred use if they will not cause substantial~~
8 ~~ecological impacts and when restoration of ecological functions is incorporated.~~
9 ~~D. Low-intensity commercial uses may be permitted if the specific uses and design result in substantial~~
10 ~~open space, public access and/or restoration of ecological functions and if compatible with~~
11 ~~surrounding uses.~~

22.30.054 Urban conservancy shoreline area – Permitted uses.

The following uses may be permitted subject to the applicable policies and regulations of this program:

- 14 1. Single-family and duplex residential.
15 2. Agricultural.
16 3. Low-intensity recreation; provided, that facilities do not require substantive alterations to
17 topography, such as public forest preserves, wildlife reserves, natural systems education, and/or
18 interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no
19 more than 30 vehicles, and buildings for interpretive facilities not exceeding 4,000 square feet,
20 subject to the criteria in WCC 23.100.100.

22.30.055 Urban conservancy shoreline area – Conditional uses.

The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- 24 A. All other residential development.
25 B. Low-intensity water-oriented commercial limited to resort, bed and breakfast, campgrounds and
26 similar facilities subject to the criteria in WCC 23.100.050. Low-intensity non-water-oriented
27 commercial limited to resort, bed and breakfast, campgrounds and similar facilities, subject to the
28 criteria in WCC 23.100.050(B)(1)(d).
29 C. Dams, diversions and tailrace structures for hydroelectric power generation.
30 D. Institutional development and essential public facilities, where there is no feasible location outside
31 the shoreline.
32 E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization
33 facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local
34 distribution, provided there is no feasible location outside the shoreline.
35 F. Sewage outfalls and treatment plants, over-water communication or power lines, fuel pipelines, or
36 other types of hazardous materials pipelines, provided there is no feasible location outside of the
37 shoreline.

22.30.056 Urban conservancy shoreline area – Prohibited uses.

The following uses are prohibited:

- 40 A. Forest practices.

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~~B.—Surface mining.~~

~~C.—All other industrial and port development.~~

~~D.—Transportation facilities not serving a specific approved use.~~

~~23.30.060 Shoreline residential area.~~

~~23.30.061 Shoreline residential area — Purpose.~~

~~The shoreline residential shoreline area accommodates residential development and accessory structures that are consistent with this chapter.~~

~~23.30.062 Shoreline residential area — Designation criteria.~~

~~The shoreline residential shoreline area is applied to shorelines if they have been predominantly developed with single-family or multifamily residential uses or are planned and platted for residential development. The designation is generally applied to residential densities of greater than one unit per acre.~~

~~23.30.063 Shoreline residential area — Policies.~~

~~Development within shoreline residential shoreline areas shall be consistent with the following policies:~~

~~A.—The scale and density of new uses and development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes.~~

~~B.—Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.~~

~~C.—Commercial development should be limited to water-oriented uses. Non-water-oriented commercial uses may be permitted as part of mixed-use developments where the primary use is residential; provided, that such uses should provide a substantial benefit with respect to the goals and policies of this program such as providing public access or restoring degraded shorelines.~~

~~23.30.064 Shoreline residential area — Permitted uses.~~

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~A.—Residential.~~

~~B.—Water-oriented commercial.~~

~~C.—Water-oriented recreation.~~

~~D.—Agricultural.~~

~~23.30.065 Shoreline residential area — Conditional uses.~~

~~The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A.—Non-water-oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~B.—Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~C.—Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~D.—Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

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~~E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~23.30.066 Shoreline residential area – Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Forest practices.~~

~~B. Surface mining.~~

~~C. All other industrial and port development.~~

~~23.30.070 Rural shoreline area.~~

~~23.30.071 Rural shoreline area – Purpose.~~

~~The purpose of the rural shoreline area is to protect shoreline ecological functions in areas having a rural character characterized by open space and low density development including, but not limited to: residences, agriculture, forestry and outdoor recreation. Uses should be compatible with the physical capabilities and limitations, natural resources and shoreline ecological functions and processes of the area.~~

~~23.30.072 Rural shoreline area – Designation criteria.~~

~~The rural shoreline area is applied to shoreline areas outside urban growth areas, particularly areas designated as rural in the Whatcom County Comprehensive Plan, and includes areas:~~

~~A. Where the shoreline currently accommodates residential uses outside urban growth areas and is characterized by low density development, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is adjacent to agricultural, forestry, and urban land uses and often provides a transition between urban areas and commercial agriculture and forestry uses. Natural vegetative cover and topography have been altered in many rural areas, but substantial ecological functions, and/or the potential for restoration of ecological functions, are present.~~

~~B. That are now used or potentially usable for a mix of agriculture, forestry, and residential use.~~

~~C. Where residential development is or should be of low density, because of limitations by physical features, 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:~~

~~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.~~

~~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.~~

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~~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.~~

~~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 provide a substantial benefit with respect to the goals and policies of this program such as providing public access and/or restoring degraded shorelines.~~

~~E. Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.~~

~~23.30.074 Rural shoreline area – Permitted uses.~~

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~A. Residential.~~

~~B. Water-oriented commercial.~~

~~C. Water-oriented industrial and/or port development.~~

~~D. Water-oriented recreation.~~

~~E. Agricultural and forest practices.~~

~~23.30.075 Rural shoreline area – Conditional uses.~~

~~The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A. Non-water-oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(8)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~

~~B. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~F. Surface mining.~~

~~23.30.080 Resource shoreline area.~~

~~23.30.081 Resource shoreline area – Purpose.~~

~~The purpose of the resource shoreline area is to protect shoreline ecological functions and processes in areas designated in the Whatcom County Comprehensive Plan as agriculture resource lands, rural forestry, commercial forestry and mineral resource lands and to protect the economic base of those lands and limit incompatible uses.~~

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23.30.082 Resource shoreline area – Designation criteria.

The resource shoreline area is applied to shoreline areas designated as agriculture, rural forestry, commercial forestry and mineral resource lands in the Whatcom County Comprehensive Plan and includes areas where the shoreline currently accommodates ongoing resource management, where natural vegetation cover has been altered but substantial ecological functions, or the potential for restoring ecological functions, are present.

23.30.083 Resource shoreline area – Policies.

Development within resource shoreline areas shall be consistent with the following policies:

- A. Uses in resource areas should protect the economic base of those lands, limit incompatible uses, and sustain the shoreline area ecological processes and functions by limiting uses and intensity. Residential use is generally limited to one dwelling per existing parcel. The dwelling may be located within the shoreline jurisdiction, only where no other building site is feasible on the parcel.
- B. Public or private outdoor recreation facilities should be permitted if they do not displace designated resource lands and if they are developed in a manner that maintains shoreline ecological functions. Preferred uses include water dependent and water enjoyment recreation facilities.
- C. Industrial or commercial use and development should be limited to uses that serve resource uses. Such uses may be located within the shoreline only if they are water dependent, water related or if no other feasible location exists within the contiguous property.

23.30.084 Resource shoreline area – Permitted uses.

The following uses may be permitted subject to the applicable policies and regulations of this program:

- A. Residential development limited to farm related residences or one residence and one accessory dwelling unit per existing parcel, where there is no feasible location outside of the shoreline.
- B. Water oriented commercial related to natural resource products predominantly produced on site.
- C. Water oriented industrial facilities for processing, manufacturing, and storage of natural resource products.
- D. Low intensity water oriented recreation, including public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, subject to the criteria in WCC 23.100.100.
- E. Agricultural and forest practices.

23.30.085 Resource shoreline area – Conditional uses.

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- A. Non water oriented commercial and industrial development related to natural resource products predominantly produced on site, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(e)(iv), respectively.
- B. Water oriented industrial and port development other than those uses related to products predominantly produced on site.
- C. Dams, diversions and tailrace structures for hydroelectric power generation.
- D. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.

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~~E. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

~~F. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.~~

~~G. Surface mining.~~

~~**23.30.086 Resource shoreline area – Prohibited uses.**
The following uses are prohibited:~~

~~A. All other commercial development.~~

~~B. Other non-water-oriented industrial and port development.~~

~~**23.30.090 Conservancy shoreline area.**~~

~~**23.30.091 Conservancy shoreline area – Purpose.**~~

~~The purpose of the conservancy shoreline area is to retain shoreline ecological functions in areas where important ecological processes have not been substantially degraded by human activities. Conservancy areas are designated outside of urban growth areas. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.~~

~~**23.30.092 Conservancy shoreline area – Designation criteria.**~~

~~The conservancy shoreline area is applied to shoreline areas outside urban growth areas that include areas:~~

~~A. Where development activities and uses are buffered from and do not substantially degrade ecological processes and functions.~~

~~B. Where ecological functions are more intact than in areas designated rural or resource.~~

~~C. Of outstanding scenic quality or other aesthetic qualities of high value to the region, which would likely be diminished unless development is strictly controlled.~~

~~D. Containing critical areas or other sensitive natural or cultural features that require more than normal restrictions on development and use.~~

~~E. Having the potential to influence ecological processes in a manner that will produce ecosystem-wide benefits upon restoration.~~

~~F. That contain valuable or sensitive natural or cultural features that preclude more than a low overall density of residents, recreation use, structures, or livestock, as well as extensive alterations to topography or other features.~~

~~G. Have recreational value to the region that would likely be diminished unless development is strictly controlled.~~

~~**23.30.093 Conservancy shoreline area – Policies.**~~

~~Development within conservancy shoreline areas shall be consistent with the following policies:~~

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- 1 ~~A. Natural ecological processes should be protected and renewable resources managed so that~~
- 2 ~~ecological functions and the resource base are maintained. Nonrenewable resources should only be~~
- 3 ~~consumed in a manner compatible with conservation of other resources and other appropriate uses.~~
- 4 ~~B. Permitted uses should be limited to those compatible with each other and with conservation of~~
- 5 ~~shoreline ecological processes and resources.~~
- 6 ~~C. Shorelines should be protected from harmful concentrations of people, livestock, buildings, or~~
- 7 ~~structures.~~
- 8 ~~D. Opportunities for ecological restoration should be pursued, prioritizing those areas with the greatest~~
- 9 ~~potential to restore ecosystem-wide processes and functions.~~
- 10 ~~E. Outstanding recreational or scenic values should be protected from incompatible development.~~
- 11 **23.30.094 Conservancy shoreline area – Permitted uses.**
- 12 **The following uses may be permitted subject to the applicable policies and regulations of this program:**
- 13 ~~A. Single-family and duplex residential development.~~
- 14 ~~B. Low intensity water-oriented recreation; provided, that facilities do not require substantive~~
- 15 ~~alterations to topography, such as public forest preserves, wildlife reserves, natural systems~~
- 16 ~~education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and~~
- 17 ~~parking areas for no more than 30 vehicles, and buildings for interpretive facilities not exceeding~~
- 18 ~~2,000 square feet, subject to the criteria in WCC 23.100.100.~~
- 19 ~~C. Agricultural and forest practices.~~
- 20 **23.30.095 Conservancy shoreline area – Conditional uses.**
- 21 **The following uses may be permitted as conditional uses subject to the applicable policies and**
- 22 **regulations of this program:**
- 23 ~~A. All other residential development.~~
- 24 ~~B. Low intensity water-oriented commercial limited to resort, bed and breakfast, campgrounds and~~
- 25 ~~similar facilities. Low intensity non-water-oriented commercial uses limited to resort, bed and~~
- 26 ~~breakfast, campgrounds and similar facilities may be permitted as a conditional use, subject to the~~
- 27 ~~criteria in WCC 23.100.050(B)(1)(d).~~
- 28 ~~C. Dams, diversions and tailrace structures for hydroelectric power generation.~~
- 29 ~~D. Institutional development and essential public facilities, where there is no feasible location outside~~
- 30 ~~the shoreline.~~
- 31 ~~E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization~~
- 32 ~~facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local~~
- 33 ~~distribution, provided there is no feasible location outside the shoreline.~~
- 34 ~~F. Sewage outfalls and treatment plants, over water communication or power lines, fuel pipelines, or~~
- 35 ~~other types of hazardous materials pipelines, provided there is no feasible location outside of the~~
- 36 ~~shoreline.~~
- 37 ~~G. Surface mining.~~
- 38 **23.30.096 Conservancy shoreline area – Prohibited uses.**
- 39 **The following uses are prohibited:**
- 40 ~~A. All other industrial and port development.~~

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~~B. Transportation facilities not serving a specific approved use.~~

~~23.30.100 Natural shoreline area.~~

~~23.30.101 Natural shoreline area—Purpose.~~

~~The purpose of the natural shoreline area is to ensure long-term preservation of shorelines inside or outside urban growth areas that are ecologically intact.~~

~~23.30.102 Natural shoreline area—Designation criteria.~~

~~The natural shoreline area is applied to shoreline areas where any of the following characteristics apply:~~

- ~~A. The majority of natural ecological shoreline functions and/or processes are retained, often evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, they include ecologically intact shorelines that are free of structural shoreline modifications, structures, and intensive human uses.~~
- ~~B. Forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.~~
- ~~C. Valuable functions are provided for the larger aquatic and terrestrial environments, which could be lost or significantly reduced by human development.~~
- ~~D. Ecosystems or geologic types that are of particular scientific and educational interest are represented.~~
- ~~E. Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal dunes, and spits are present.~~
- ~~F. New development, extractive uses, or physical modifications cannot be supported without significant adverse impacts to ecological functions and/or processes or risk to human safety.~~

~~23.30.103 Natural shoreline area—Policies.~~

~~Development within natural shoreline areas shall be consistent with the following policies:~~

- ~~A. Preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential use. Uses should not degrade shoreline ecological functions or processes or the natural character of the shoreline area. New development or significant vegetation removal that would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.~~
- ~~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.~~
- ~~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.~~
- ~~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.~~

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~~23.30.104 Natural shoreline area – Permitted uses.~~

~~The following uses may be permitted subject to the applicable policies and regulations of this program:~~

~~A. Low intensity water-oriented recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 10 vehicles, and buildings for interpretive facilities not exceeding 500 square feet, subject to the criteria in WCC 23.100-100.~~

~~B. Low intensity agricultural.~~

~~23.30.105 Natural shoreline area – Conditional uses.~~

~~The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:~~

~~A. Single family residential use and development is only permitted on existing lots of record and where there is no feasible location outside the shoreline. Further subdivision is not permitted.~~

~~B. Forest practices; provided, that it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.~~

~~23.30.106 Natural shoreline area – Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. All other residential.~~

~~B. Commercial.~~

~~C. Industrial and port development.~~

~~D. Non water-oriented recreation.~~

~~E. Institutional.~~

~~F. Transportation facilities not serving a specific approved recreational development.~~

~~G. Utility development not serving a specific approved use.~~

~~H. Surface mining.~~

~~23.30.110 Aquatic shoreline area.~~

~~23.30.111 Aquatic shoreline area – Purpose.~~

~~The purpose of the aquatic shoreline area is to protect, restore, and manage the characteristics and resources of the areas waterward of the ordinary high water mark.~~

~~23.30.112 Aquatic shoreline area – Designation criteria.~~

~~The aquatic shoreline area is defined as the area waterward of the ordinary high water mark of all streams, rivers, marine water bodies, and lakes, constituting shorelines of the state together with their underlying lands and their water column.~~

~~23.30.113 Aquatic shoreline area – Policies.~~

~~Development within aquatic shoreline areas shall be consistent with the following policies:~~

~~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~~

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development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

~~B. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.~~

~~C. Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.~~

~~D. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural conditions.~~

~~23.30.114 Aquatic shoreline area – Permitted uses.~~

~~Permitted uses consist of the water-dependent uses permitted in abutting upland shoreline area designations, subject to the exceptions listed in WCC 23.30.116.~~

~~23.30.115 Aquatic shoreline area – Conditional uses.~~

~~Conditional uses consist of those water-dependent conditional uses designated in abutting upland shoreline area designations.~~

~~23.30.116 Aquatic shoreline area – Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Residential.~~

~~B. Non water-dependent commercial, industrial and port development.~~

~~C. Institutional.~~

~~D. Agricultural.~~

~~23.30.120 Cherry Point management area.~~

~~The policies, regulations and standards, etc., applicable to the Cherry Point management area are found in WCC 23.100-170, except as otherwise specified therein.~~

Chapter 23.40 Shorelines of Statewide Significance

23.40.010 Adoption of policy.

In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all shorelines of statewide significance in unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified in WCC 23.40.020. Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:

- A. Recognize and protect the statewide interest over local interest.
 - B. Preserve the natural character of the shoreline.
 - C. Result in long term over short term benefit.
 - D. Protect the resources and ecology of the shoreline.
 - E. Increase public access to publicly owned areas of the shoreline.
 - F. Increase recreational opportunities for the public in the shoreline.
 - G. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
- Uses that are not consistent with these policies should not be permitted on shorelines of statewide significance.

Comment [MD34]: Moved to CompPlan.

23.40.020 Designation of shorelines of statewide significance.

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of unincorporated Whatcom County, including the shorelands and associated wetlands as therein defined, as having statewide significance:

D. Lakes:

- 1. Lake Whatcom;
- 2. Ross Lake; and
- 3. Baker Lake.

E. Rivers:

- 1. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork to the mouth of Glacier Creek and its South Fork to the mouth of Hutchinson Creek.
- 2. Skagit River: upstream of the Whatcom-Skagit County line to the point where the mean annual flow is measured at 1,000 feet per second or more, approximately, at the confluence of Newhalem Creek.

F. Marine:

- 1. Birch Bay from Birch Point to Point Whitehorn.
- 2. All other marine waters, water columns, and bedlands waterward of extreme low tide.

23.40.030 Policies for shorelines of statewide significance.

The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the county shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:

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- 1 A. ~~Redevelopment of shorelines should be encouraged where it restores or enhances shoreline~~
- 2 ~~ecological functions and processes impaired by prior development activities.~~
- 3 B. ~~The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack~~
- 4 ~~Tribe, and other resources agencies should be consulted for development proposals that could~~
- 5 ~~affect anadromous fisheries.~~
- 6 C. ~~Where commercial timber cutting takes place pursuant to WCC 23.90.110 and RCW 90.58.150,~~
- 7 ~~reforestation should take place as soon as possible.~~
- 8 D. ~~Activities that use shoreline resources on a sustained yield or non-consuming basis and that are~~
- 9 ~~compatible with other appropriate uses should be given priority over uses not meeting these~~
- 10 ~~criteria.~~
- 11 E. ~~The range of options for shoreline use should be preserved to the maximum possible extent for~~
- 12 ~~succeeding generations. Development that consumes valuable, scarce or irreplaceable natural~~
- 13 ~~resources should not be permitted if alternative sites are available.~~
- 14 F. ~~Potential short-term economic gains or convenience should be measured against potential long-~~
- 15 ~~term and/or costly impairment of natural features.~~
- 16 G. ~~Protection or enhancement of aesthetic values should be actively promoted in design review of new~~
- 17 ~~or expanding development.~~
- 18 H. ~~Resources and ecological systems of shorelines of statewide significance should be protected.~~
- 19 ~~Shorelands and submerged lands should be protected to accommodate current and projected~~
- 20 ~~demand for economic resources of statewide importance such as commercial shellfish beds.~~
- 21 I. ~~Those limited shorelines containing unique, scarce and/or sensitive resources should be protected~~
- 22 ~~to the maximum extent feasible.~~
- 23 J. ~~Erosion and sedimentation from development sites should be controlled to minimize adverse~~
- 24 ~~impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control,~~
- 25 ~~excavations, land clearing, or other activities likely to result in significant erosion should be severely~~
- 26 ~~limited.~~
- 27 K. ~~Public access development in extremely sensitive areas should be restricted or prohibited. All forms~~
- 28 ~~of recreation or access development should be designed to protect the resource base upon which~~
- 29 ~~such uses in general depend.~~
- 30 L. ~~Public and private developments should be encouraged to provide trails, viewpoints, water access~~
- 31 ~~points and shoreline related recreation opportunities whenever possible. Such development is~~
- 32 ~~recognized as a high priority use.~~
- 33 M. ~~Development not requiring a waterside or shoreline location should be located inland so that lawful~~
- 34 ~~public enjoyment of shorelines is enhanced.~~
- 35 N. ~~Lodging and related facilities should be located inland and provide for appropriate means of access~~
- 36 ~~to the shoreline.~~

Comment [MD35]: Moved to CompPlan.

Chapter 23.390 General Regulations

23.90.010 Applicability.

All use and development activities on shorelines shall be subject to all of the following general policies and regulations in addition to the applicable use policies and regulations of Chapter 23.100 WCC; provided, that all use and development that is to be located within the Cherry Point management area, as defined in Chapter 23.110 WCC, shall be subject to the policies and regulations found in WCC 23.100.170 and shall not be subject to the policies and regulations found in this chapter and Chapter 23.100 WCC unless otherwise specified.

23.90.020 Land use.

The following land use policies delineate the use preferences of the Act and this program and are intended to support the goals and objectives of the program:

A. Policies:

1. Single-family residences should be given preference for location on shorelines in those limited instances when an alteration of the shorelines is authorized (RCW 90.58.020). Single-family residences occupied prior to January 1, 1992, and their appurtenant structures should be protected against damage or loss caused by shoreline erosion; provided, that measures to protect single-family residences should be designed to minimize harm to the shoreline environment.
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.
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.

B. Regulations:

1. Single-family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of this program.
2. Resource uses such as agriculture, forestry and mining activities shall be carried out in a manner consistent with the applicable policies and regulations of this program.
3. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this program.
4. Shoreline uses and developments that are water dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses. Interim non-water-dependent uses authorized as a conditional use may be allowed to respond to short-term

Comment [AP36]: This chapter has been moved forward as it contains the general regulations and the others more specific regulations. All policies, with exception of regulations and those noted as duplicative, have been moved to the CompPlan.

Comment [DN37]: Moved to 23.10 Applicability and slightly reworded

Comment [AP38]: Removed. This provision is more appropriate as a policy, which is already captured in the CompPlan. Implementing regulations are included in the Residential Shoreline Use and Modification Section (WCC 23.40.160).

Comment [AP39]: Removed for clarity and simplicity. This is established in the use table and the applicable use and modification sections.

Comment [DN40]: Moved to WCC 23.40.170 (Restoration and Enhancement)

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market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.

5. Shoreline uses and developments should be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

6. Navigable waters should be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.

7. Shoreline uses and developments should be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

23.90.030-30.010 Ecological Protection and critical areas.

A. Ecological protection of shoreline environments shall be achieved through compliance with WCC Chapter 16.16 (Critical Areas) and (B) and (C) of this subsection.

A. Policies:

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 Chapter 16.16 WCC, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, insofar as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.

3. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

B. Regulations:

A. An assessment of the existing ecological functions and/or processes provided by topographic, physical, and vegetation characteristics of the site shall accompany development proposals. Such assessments shall include the following general information:

Comment [DN41]: These provisions were moved to WCC 23.40.030 (General Shoreline Use and Modifications) since they are applicable to that section. These were also reviewed as policies for the CompPlan.

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~~1. Impacts of the proposed use/development on ecological processes with clear designation of existing and proposed routes for water flow, wildlife movement, and other features.~~
~~Infrastructure requirements such as parking, services, lighting, and other features, together with the effects of those infrastructure improvements on shoreline ecological functions and/or processes.~~

~~B. Development, use, and activities within the shoreline jurisdiction shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186.~~

~~C. To provide for flexibility in the administration of the ecological protection provisions of this program, buffer modification and alternative mitigation approaches as provided for in WCC 16.16 may be approved within shorelines where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this program and are scientifically supported.~~

~~B. Mitigation Sequencing. To comply with the policies of subsection A of this section, a shoreline permit applicant or project proponent shall demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:~~

~~C. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.~~

~~D. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.~~

~~E. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.~~

~~F. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.~~

~~G. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures. Where appropriate, new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.~~

~~H. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified,~~

~~I. Because of its incorporation by reference herein under WCC 23.10.060(A), the provisions of the Whatcom County critical areas ordinance, Chapter 16.16 WCC, shall apply to any use, alteration, or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with Chapter 16.16 WCC and the program; provided, that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225(B)(3). Within shoreline jurisdiction, the regulations of Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this program and Chapter 16.16 WCC.~~

Comment [AP42]: Moved from Site Planning section (WCC 23.30.090). Note: Per Scoping Document, Item #5a., removed "provided, that proposals for single-family residences shall be exempt from this requirement."

Comment [CES43]: Covered by CAO

Comment [CES44]: Covered by CAO

Comment [CES45]: Moved to 23.40.030 (General Shoreline Use and Modification Regulations)

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1 — Accessory uses that do not require a shoreline location shall be sited away from the land/water
2 interface and landward of the principal use and, unless otherwise specified,

Comment [CES46]: Covered by CAO

3 ~~J.A. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails~~
4 ~~specifically designated for such use. Motor vehicle use, except for vessels and float planes, is~~
5 ~~prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches,~~
6 ~~wetlands and/or their associated buffers; except as necessary for public health and safety or~~
7 ~~permitted maintenance activities associated with approved developments or as otherwise~~
8 ~~permitted.~~

Comment [CES47]: Moved to 23.40.030
General Shoreline Use and Modification Regulations

9 ~~K. Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in~~
10 ~~a manner that does not preclude or significantly interfere with wildlife movement to, or from~~
11 ~~important habitat areas consistent with the applicable provisions of Chapter 16.16 WCC this~~
12 ~~program; provided, that the administrator/Director may exempt security fencing associated with~~
13 ~~residential, industrial, and/or commercial developments from this requirement on a case-by-case~~
14 ~~basis.~~

Comment [CES48]: Moved to 23.40.030
General Shoreline Use and Modification Regulations

15 ~~L. To provide for flexibility in the administration of the ecological protection provisions of this~~
16 ~~program, alternative mitigation approaches as provided for in WCC 16.16.2610(E) may be approved~~
17 ~~within shorelines as a conditional use where such approaches provide increased protection of~~
18 ~~shoreline ecological functions and processes over the standard provisions of this program and are~~
19 ~~scientifically supported.~~

20 ~~M. The cumulative effects of individual development proposals shall be identified and evaluated to~~
21 ~~assure that no net loss standards are achieved. Whenever the administrator issues a determination~~
22 ~~or recommendation and/or conditions of approval on a proposal, which will result in the denial of~~
23 ~~substantial alteration of a proposed action, such determinations will be provided in writing stating~~
24 ~~the relationship(s) between the ecological factors, the proposed action and the condition(s).~~

Comment [CES49]: Covered by CAO

23.30.020 Critical Areas

25 — ~~Because of its incorporation by reference under WCC 23.10.065, the provisions of the Whatcom~~
26 ~~County critical areas regulations, Chapter 16.16 WCC, shall apply to any use, alteration or~~
27 ~~development within shoreline jurisdiction whether or not a shoreline permit or written statement of~~
28 ~~exemption is required. Unless otherwise stated, no development shall be constructed, located,~~
29 ~~extended, modified, converted, or altered, or land divided, without full compliance with~~
30 ~~Chapter 16.16 WCC and this program; provided, that alteration for a water-oriented use may be~~
31 ~~allowed in accordance with WCC 16.16.225. Within shoreline jurisdiction, the regulations of~~
32 ~~Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the~~
33 ~~objectives and purposes of the provisions of the program and Act.~~

Comment [CES50]: Covered by CAO

23.90.04030.0320 Water Quality and Quantity.

35 A. Policies.

36 B. The location, construction, operation, and maintenance of all shoreline uses and developments
37 should maintain or enhance the quantity and quality of surface and ground water over the long
38 term.
39

Comment [AP51]: Incorporated reference to
stormwater regulations and removed redundant
regs from this section.

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~~C. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.~~
~~D. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.~~

~~E. Regulations.~~

~~F.A. Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws, including compliance with Whatcom County stormwater and drainage regulations in WCC 20.80.630 through 20.80.635.~~

~~1. Development shall meet minimum requirements 1 – 9 of the current stormwater manual, as applicable. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention, and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.~~

~~2. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan or administrative conditions.~~

~~B. To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards. The owner must be in compliance with WCC 24.05.160, (Operation and Maintenance).~~

~~G.C. Septic tanks and drainfields are prohibited where public sewer is reasonably available.~~

~~H.D. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites, or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic, or pentachlorophenol is prohibited in or above shoreline water-bodies.~~

~~E. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate. Outfalls (including stormwater and sewer outfalls) and discharge pipes shall not be located in critical saltwater habitats or areas where outfall or discharge will adversely affect critical saltwater habitat, unless the applicant can show that all of the following can be met:~~

~~1. There is no feasible alternative location for the outfall or pipe;~~

~~2. The outfall or pipe is placed below the surface of the beach or bed of the waterbody, except at the point of discharge;~~

~~3. The discharge point(s) on the outfall or discharge pipe is located so the discharges, including nutrients and flow, do not adversely affect critical saltwater habitats; and~~

~~4. For public sewage outfalls:~~

~~1. The outfall discharges waterward of the intertidal zone.~~

~~2. The disturbed area will be revegetated with native vegetation.~~

Comment [DN52]: Relocated from the Utilities section since this applies universally.

Comment [AP53]: Removed to reduce redundancy. Already captured in stormwater regulations (WCC 20.80.630).

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H.F. The use of existing outfalls shall be maximized to limit the need for additional outfalls, provided the existing outfall meets the standards of this section, or unless an alternatives analysis demonstrates the dispersal is less impacting to the shoreline environment.

Comment [AP54]: Added to address potential impacts from stormwater and sewer outfalls

23.90.05030.0430 Views and Aesthetics.

A. Policies.

- a. ~~Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.~~
- b. ~~Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.~~
- c. ~~Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting, designation of view corridors and maintenance of natural vegetative buffers.~~
- d. ~~Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.~~

E. Regulations.

A. ~~When the two are in conflict,~~ Protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for new visual access except where otherwise allowed by this program, when the two are in conflict.

B. ~~The following standards shall apply to developments and uses within the jurisdiction of this program:~~

B. To protect views of the shoreline from existing structures, setbacks may be modified pursuant to WCC 23.400.020(D) (Shoreline Bulk Provisions, Setbacks)

C. To minimize impacts to views from the water, the Director may require the planting of vegetation to mitigate the impacts.

G.D. ~~Where commercial, industrial, mixed use, multifamily, and/or multi-let-unit developments are proposed, primary structures shall provide for reasonable view corridors between buildings.~~

D.E. ~~Buildings shall incorporate architectural and/or landscape features that reduce scale or bulk, such as setbacks, vegetation, pitched roofs, offsets, angled facets, and recesses.~~

E.F. ~~Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.~~

F.G. ~~Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.~~

G.H. ~~Any other design standards included in community plans or regulations adopted by Whatcom County shall apply.~~

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H. Fences, walls ~~other than retaining walls~~, hedges, and other similar accessory structures, excluding those associated with agricultural uses, shall be limited to four feet in height between the ordinary high water mark and structures, and within shoreline view areas as defined in WCC Chapter 23. ~~11.60~~ (Definitions); provided, that, within shoreline view areas, the ~~administrator~~ Director may approve a greater height where a fence or other feature is parallel to the right-of-way and does not extend above a line of sight between the ordinary high water mark and a point three and one-half feet above the centerline of the road.

Comment [AP55]: Added for clarity per Scoping Document, Item #17e.

~~I. Where permitted, fences, walls, hedges and other similar structures shall be limited to four feet in height within critical area buffers. Outside of critical area buffers, fences shall be limited to six feet in height.~~

Comment [DN56]: Moved to Bulk Provisions since this provision does not address Views and Aesthetics

J. Fences, walls, hedges, or ~~private~~ accessory structures on public property shall not be permitted to obscure shoreline views within shoreline view areas as defined in WCC Chapter 23. ~~11.60~~ or from existing residences on adjacent property, ~~or views from the water~~, unless specific findings are made that the proposed view obstruction is justified by overriding considerations of the public interest.

K. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas, or roadways; ~~to~~ avoid infringing on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas, and screening.

Comment [DN57]: Moved from the former Site Planning section

~~L. Where shoreline setbacks or buffers are allowed to be reduced per this program, the proposed use or development shall not be permitted to substantially obscure shoreline views within shoreline view areas as defined in WCC Chapter 23. ~~60~~ (Definitions), or from existing residences on adjacent property.~~

Comment [AP58]: Added per Scoping Document, Item #18c.

M. Limbing, clearing, and/or thinning for limited view corridors shall only be allowed pursuant to WCC 16.16.235(B)(5) (Activities Allowed with Notification), except that view corridors are not permitted in the Natural shoreline environment.

~~K. Stairs and walkways located within the shoreline or critical area buffers shall not exceed four feet in width; provided that where ADA requirements apply, such facilities may be increased to five feet in width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.~~

Comment [T59]: Removed for clarity. This is fully captured in the Shoreline Bulk Provisions.

~~23.90.060~~ ~~30.0540~~ Vegetation Conservation Management.

1. Pursuant to WCC 16.16.710, shorelines are designated as Fish & Wildlife Habitat Conservation Areas. Within these areas and their buffers it is important to protect and enhance vegetation to provide ecological and habitat functions as well as human health and safety. Vegetation management practices consist of retaining or improving vegetated areas to protect the integrity, functions, and values of the affected critical area (shoreline) while allowing the shoreline buffer to be modified to accommodate allowed uses when consistent with the Act and this program.

2. Vegetation management within the shoreline buffer shall adhere to the regulations of WCC Chapter 16.16 (Critical Areas). In addition:

1. Vegetation clearing within shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development.

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1-2. ~~Design of structures~~ Shoreline development shall ~~should~~ conform to natural contours and minimize disturbance to soils and native vegetation, ~~as feasible. Feasible shall include incorporation of trails or stairs from parking areas on steep slopes, and other design elements to lessen the need to alter natural contours and minimize soil and native vegetation disturbance.~~ Tiered foundations shall ~~be tiered~~ incorporate with earth retention ~~incorporated~~ into the structural design.

Comment [DN60]: Moved and modified from former Site Planning section.

2-3. ~~Where compliance with subsection (B)(1) of this section is not feasible or required, new~~ All shoreline developments shall ~~be required to~~ develop and implement a vegetation management plan. ~~When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260(BG) and (CH); provided, that the administrator/Director may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County auditor.~~

3. ~~Policies.~~

a. ~~Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:~~

i. ~~Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.~~

ii. ~~Regulating microclimate in riparian and nearshore areas.~~

iii. ~~Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates.~~

iv. ~~Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.~~

v. ~~Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.~~

vi. ~~Improving water quality through filtration and vegetative uptake of nutrients and pollutants.~~

vii. ~~Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.~~

viii. ~~Providing habitat for wildlife, including connectivity for travel and migration corridors.~~

4. ~~B. Regulations.~~

1. ~~Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.~~

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- 1 ~~3. Nonconforming lots that do not provide sufficient area to meet the standard dimensional~~
2 ~~requirements for buffers and setbacks as provided for in WCC 23.50.070(N) and are not located~~
3 ~~within a landslide, alluvial fan, or riverine and coastal erosion hazard areas, as defined in WCC~~
4 ~~16.16.310, may employ the following standards in lieu of the vegetation management provisions~~
5 ~~of subsection (B)(2) of this section:~~
6 ~~a. An inner management zone shall extend perpendicularly from the shoreline ordinary~~
7 ~~high water mark or critical area edge a distance equal to 50 percent of the buffer~~
8 ~~dimension established for nonconforming lots in WCC 23.50.070(N). In the inner~~
9 ~~management zone:~~
10 ~~i. Lawn or turf is prohibited due to its limited functional benefits and need for~~
11 ~~chemical and fertilizer applications. Understory consisting of native groundcover~~
12 ~~and shrubs shall be provided at a sufficient density to prevent erosion, stabilize~~
13 ~~soils, and intercept surface runoff.~~
14 ~~ii. Native trees shall be provided at a sufficient density and species composition to~~
15 ~~mimic natural vegetative conditions for purposes of creating shade, attenuating~~
16 ~~water temperature, stabilizing soils, and providing large woody debris and other~~
17 ~~organic inputs critical for aquatic resources.~~
18 ~~b. An outer management zone shall extend from the outer boundaries of the inner~~
19 ~~management zone to the edge of the critical area buffer. Within the outer management~~
20 ~~zone:~~
21 ~~i. Vegetation management shall consist of the requirements of subsection (B)(3)(a) of~~
22 ~~this section; provided, that on slopes of 25 percent or less, lawn, turf, ornamental~~
23 ~~vegetation or gardens may be allowed on up to 10 percent of the area or 500 square~~
24 ~~feet, whichever is greater.~~
25 ~~ii. Lawn or turf shall be prohibited on slopes greater than 25 percent.~~
26 ~~4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved~~
27 ~~shoreline development.~~
28 ~~5. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation~~
29 ~~management plans, as necessary, to facilitate establishment of a stable community of native~~
30 ~~plants.~~
31 ~~6. Clearing, pruning and revegetation of buffer areas, except landslide hazard areas and buffers~~
32 ~~and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with~~
33 ~~the regulations in WCC 16.16.235(5).~~
34 ~~7. Selective vegetation clearing and pruning may be allowed in landslide hazard areas and/or~~
35 ~~riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved~~
36 ~~vegetation management plan designed to improve overall slope or bank stability. The plan shall~~
37 ~~be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical~~
38 ~~engineer.~~
39 ~~8. Vegetation conservation standards shall not apply retroactively to existing uses and~~
40 ~~developments, such as existing agricultural practices.~~

Comment [CES61]: Moved up.

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9. ~~Vegetation conservation standards do not apply to the removal of hazard trees pursuant to WCC 16.16.230(F).~~

10. ~~Unless otherwise stated, the vegetation conservation regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and Chapter 16.16 WCC, and shall be limited to the minimum necessary to accommodate an approved use.~~

Comment [AP62]: Moved to Forest Practices section (WCC 23.40.100).

23.90.07030.0650 Archaeological, Historic, and Cultural Resources.

A. Project Approval Requirements.

Comment [AP63]: Section rewritten in conjunction with the LNTPO & WA State DAHP for greater clarity and streamlining.

1. Upon receipt of an application for a permit, exemption, or other approval for a proposed project, the County shall determine whether the project lies within 500 feet of a site known to contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources.
2. If the project meets this criterion, a cultural resources survey and report meeting the requirements of subsection (B) shall be required.
3. Whatcom County shall provide the cultural resource report to DAHP—and if Native American cultural resources are addressed, to the Lummi Nation Tribal Historic Preservation Office, the Nooksack Tribe, and/or other affected Native American Tribes—for a fifteen (15) day review and comment opportunity. Said review period may run concurrently with other required public review periods, such as for SEPA.
4. Based upon consultation with DAHP and the affected Tribe(s), the Director may approve the report or reject or request revision of the conclusions reached and/or management recommendations when the assessment is inaccurate or does not fully address the cultural resource management concerns involved.
5. If the cultural resource report identifies the presence of a cultural resource, any permit issued shall be conditioned on meeting the approved report's management recommendations.
6. Regardless of whether any cultural resources are identified or not, any activities are still subject to the state and federal regulations, including those regarding inadvertent discoveries (RCWs 68.50.645, 27.44.055, and 68.60.055).
7. Final cultural resource reports shall be filed with DAHP prior to the County's issuance of a permit, exemption, or other approval by the applicant or his/her agent. The project's cultural resource professional shall also uploading their reports and site forms to WISAARD, the state's digital repository for architectural and archaeological resources and reports maintained by DAHP.
8. Any costs associated with a cultural resource review shall be borne by the applicant.

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B. Cultural Resources Report Standards.

1. Cultural resources reports shall meet the most recent "Washington State Standards for Cultural Resource Reporting" issued by DAHP (<https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting>)
2. Cultural resources reports addressing archaeological resources shall be conducted by a professional archaeologist that meets the Secretary of the Interior Professional Qualification Standards (36 CFR Part 61). Cultural resources reports addressing historic resources shall be conducted by a qualified historic preservation professional.
3. If the cultural resource assessment identifies the presence of a cultural resource, the report must provide management recommendations that, at a minimum, conform to DAHP's most current management standards. Such recommendations will depend on the resource identified, but may include but are not limited to:
 - a. Inadvertent Discovery Plan;
 - b. On-site monitoring by a qualified professional and/or a Tribal representative;
 - c. Avoidance, by redesigning the project; or
 - d. When impacts cannot be avoided, obtaining a Cultural Resource Permit (see RCWs 27.44 and 27.53; <https://dahp.wa.gov/archaeology/archaeological-permitting>, and <https://apps.leg.wa.gov/WAC/default.aspx?cite=25-48-060>).

G. A. Policies:

1. The county should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.
2. Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.
3. Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this program.
4. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.
5. Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long-term protection of both historic values and shoreline ecological functions.
6. Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

Comment [PDS64]: Policies moved to the C/P.

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7. ~~If development is proposed adjacent to an identified historic, cultural or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.~~
8. ~~The cultural resource provisions of this program are consistent with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.~~

~~H. Regulations.~~

~~A. Known Archaeological, Historic, and Cultural Resources.~~

- i. ~~Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural, or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural, or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible. The applicant shall submit a minimum of five copies of the site assessment to the administrator for distribution to the applicable parties for review.~~
- ii. ~~If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a cultural resource management plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five copies of the CRMP to the administrator for distribution to the applicable parties for review.~~
- a. ~~A CRMP shall contain the following minimum elements:~~
- ~~i. The purpose of the project; and~~
 - ~~ii. A site plan for proposed on-site development; and~~
 - ~~iii. Depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing, and grading; and~~
 - ~~iv. An examination of project on-site design alternatives; and~~
 - ~~v. An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and~~
 - ~~vi. A description of the historic/archaeological resources affected by the proposal; and~~
 - ~~vii. An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and~~

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- viii. ~~An analysis of how these impacts have been avoided;~~ or w
- ix. ~~Where avoidance is not possible, how these impacts have been mitigated/minimized;~~
~~and~~
- x. ~~A recommendation of appropriate mitigation measures, which may include but are~~
~~not limited to the following:~~
 - A. ~~Recording the site with the State Department of Archaeology and Historic~~
~~Preservation, or listing the site in the National Register of Historic Places,~~
~~Washington Heritage Register, as applicable, or any locally developed historic~~
~~registry formally adopted by the Whatcom County Council;~~
 - B. ~~Preservation in place;~~
 - C. ~~Re-interment, in the case of grave sites;~~
 - D. ~~Covering an archaeological site with a nonstructural surface to discourage~~
~~pilferage (e.g., maintained grass or pavement);~~
 - E. ~~Excavation and recovery of archaeological resources;~~
 - F. ~~Inventorizing prior to covering of archaeological resources with structures or~~
~~development; and~~
 - G. ~~Monitoring of construction excavation.~~
- xi. ~~An outline of actions to be taken by the property owner, developer, archaeologist, or~~
~~historic preservation professional, as applicable, in the event that an inadvertent~~
~~discovery of historic, cultural, or archaeological sites or artifacts occurs during site~~
~~development, which includes the following:~~
 - A. ~~A statement that work on that portion of the development site shall be stopped~~
~~immediately and the find reported as soon as possible to the administrator and~~
~~other appropriate governments and agencies.~~
 - B. ~~Contact information for applicable parties, agencies, and governments including~~
~~the county administrator, the Washington State Department of Archaeology and~~
~~Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack~~
~~Tribe, professional archaeologist or historic preservation professional; and in the~~
~~event of inadvertent discovery of human remains, additional contact information~~
~~for the Whatcom County Sheriff's office, Whatcom County Medical Examiner,~~
~~and/or Lummi Repatriation Office.~~
 - C. ~~Proposed measures to stabilize, contain, or otherwise protect the area of~~
~~inadvertent discovery until a site investigation and/or site assessment is~~
~~conducted.~~
- xii. ~~Where provision of public access for the purpose of public education related to a~~
~~private or publicly owned building or structure of historic significance is desired by the~~
~~property owner, a public access management plan shall be developed in consultation~~
~~with the Washington State Department of Archaeology and Historic Preservation,~~
~~Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other~~
~~agencies, as appropriate, to address the following:~~

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- 1 A. ~~The type and/or level of public access that is consistent with the long-term~~
- 2 ~~protection of both historic resource values and shoreline ecological functions and~~
- 3 ~~processes; and~~
- 4 B. ~~Site- and resource-specific conditions and/or improvements including the~~
- 5 ~~following, as applicable:~~
- 6 ~~(1) Hours of operation;~~
- 7 ~~(2) Interpretive and/or directional signage;~~
- 8 ~~(3) Lighting;~~
- 9 ~~(4) Pedestrian access, and/or~~
- 10 ~~(5) Traffic and parking.~~
- 11 ~~xiii. Where provision of public access for purposes of public education related to an~~
- 12 ~~archaeological or cultural resource site is desired by the property owner, the~~
- 13 ~~Washington State Department of Archaeology and Historic Preservation, Lummi~~
- 14 ~~Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other agencies, as~~
- 15 ~~appropriate, shall be in agreement prior to providing public access to the site. An~~
- 16 ~~access and resource management plan shall be developed in consultation with the~~
- 17 ~~Washington State Department of Archaeology and Historic Preservation, the Lummi~~
- 18 ~~Nation Tribal Historic Preservation Office, and the Nooksack Tribe.~~
- 19 b. ~~The recommendations and conclusions of the CRMP shall be used to assist the administrator~~
- 20 ~~in making final administrative decisions concerning the presence and extent of historic/~~
- 21 ~~archaeological resources and appropriate mitigating measures. The administrator shall~~
- 22 ~~consult with the Washington State Department of Archaeology and Historic Preservation,~~
- 23 ~~Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe prior to approval of~~
- 24 ~~the CRMP.~~
- 25 c. ~~The administrator may reject or request revision of the conclusions reached in a CRMP~~
- 26 ~~when the administrator can demonstrate that the assessment is inaccurate or does not fully~~
- 27 ~~address the historic/archaeological resource management concerns involved.~~
- 28 d. ~~Upon receipt of a complete development permit application in an area of known historic/~~
- 29 ~~archaeological resources, the county shall notify and request a recommendation from~~
- 30 ~~appropriate agencies such as the Washington State Department of Archaeology and Historic~~
- 31 ~~Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe.~~
- 32 ~~Recommendations of such agencies and other affected persons shall be duly considered and~~
- 33 ~~adhered to whenever possible and reasonable. Notification shall include the following~~
- 34 ~~information:~~
- 35 ~~i. The date of application, the date of notice of completion for the application, and the~~
- 36 ~~date of the notice of application;~~
- 37 ~~ii. A site map including the street address, tax parcel number, township, range, and section~~
- 38 ~~of the proposed project area;~~
- 39 ~~iii. A description of the proposed project action and a list of the project permits included in~~
- 40 ~~the application, and, if applicable, a list of any studies requested by the cCounty;~~

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- iv. The identification of other permits not included in the application to the extent known by the cCounty;
 - v. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
 - vi. Any other information determined appropriate by the County;
 - vii. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
 - viii. A statement of the limits of the comment period and the right of each agency to comment on the application within a 15-day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.
- e. In granting shoreline permits or statements of exemption for such development, the cCounty may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to Chapters 27.44 and 27.53 RCW may apply in addition.
- B. ~~Inadvertent Discovery.~~
1. ~~Whenever historic, cultural, or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured, and the find reported as soon as possible to the administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and the administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, the administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.~~
 2. ~~If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained, or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to subsection (B)(1)(a) of this section to determine the significance of the discovery and the extent of damage to the resource and shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe for a 15-day review period or, in the case of inadvertent discovery of human remains, a 30-day review period to determine the~~

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significance of the discovery. If the site has been determined not to be significant by the above-listed agencies or governments, or if the above-listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.

3. Upon receipt of a positive determination of a site's significance, the administrator may invoke the provisions of subsections (B)(1)(b) through (d) of this section for a cultural resource management plan, if such action is reasonable and necessary to implement related SMP objectives.

C. The requirements of subsection (B)(1) of this section do not apply where an applicant/project proponent has obtained an approved archeological excavation and removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060; provided, that the applicant must adhere to the requirements of said approved permit.

~~23.90.080~~ 23.90.030.0260 Public Access.

a. Policies.

- i. Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.
- ii. Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured. As required by the governing principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.
- iii. 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.
- iv. Non-water-related uses or activities located on the shoreline should provide public access as a public benefit.
- v. 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.
- vi. Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.
- vii. 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.

b. Regulations.

- A. ~~In the review of~~ All shoreline substantial development, shoreline conditional use permits, or developments of more than four residential lots or dwelling units, ~~consideration of shall provide~~

Comment [AP65]: Removed several provisions below that are beyond WAC requirements.

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public access ~~shall be required, subject to the test stated in subsection (A)(2) of this section.~~ When appropriate, provisions for adequate public access shall be incorporated into such proposals, including land division. ~~An applicant shall not be required to provide public access if the decision-maker determines that one or more of the following conditions apply unless the applicant/proponent demonstrates that one or more of the following provisions apply:~~

- ~~1. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;~~
- ~~2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;~~
- ~~3.1. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long-term cost of the proposed development;~~
- ~~4. Significant environmental impacts will result from the public access that cannot be mitigated;~~
~~— Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.~~
- ~~2. The parcel is separated from the water by an existing developed road or an additional parcel that serves to create a distinct break in connectivity to the shoreline.~~
- ~~3. Other reasonable and safe opportunities for public access to the shoreline are located within one-quarter mile of the proposed development site.~~
- ~~4. The site is part of a larger development project that has previously provided public access as part of the development permitting process.~~
- ~~5. The proposed development is for the subdivision of property into four or fewer parcels.~~
- ~~6. The proposed development consists of only agricultural activities.~~
- ~~7. Provision of public access on the site would pose a health or safety risk to the public due to the nature of the proposed use or activity or the location of public access, or would be infeasible due to security requirements associated with the proposed development.~~
- ~~8. Provision of public access at the proposed development site would result in a net loss of shoreline ecological function that cannot be effectively mitigated or avoided, or would pose a risk to threatened and/or endangered species listed under the Endangered Species Act.~~
- ~~5.9. The proposal consists solely of a new or expanded utility crossing through shoreline jurisdiction, serving development located outside shoreline jurisdiction~~

Comment [CES66]: Deleted, as WAC 173-26 - 221 does not list cost

~~B. When provisions for public access are required as a condition of project approval, the administrator shall prepare written findings, pursuant to Chapter 23.60 WCC, demonstrating consistency with the principles of nexus and proportionality and the test stated in subsection (A)(2) of this section and WCC 23.50.080(A).~~

~~C. Prior to deciding public access is not required pursuant to subsection (B)(1)(a) through (e) of this section, the county must determine that all reasonable alternatives have been exhausted; including, but not limited to:~~

- ~~1. Regulating access by such means as maintaining a gate and/or limiting hours of use;~~
- ~~2. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and~~

Comment [CES67]: Combined existing text w/ WAC 173-26 - 221 text

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3. ~~Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.~~
- D. ~~Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of subsection A of this section and this subsection B:~~
1. ~~Single-family residential development of four or fewer lots.~~
 2. ~~Dredging.~~
 3. ~~Forest practices.~~
 4. ~~Landfill and excavation.~~
 5. ~~Mining.~~
 6. ~~Private docks serving four or fewer dwelling units.~~
 7. ~~Instream structures.~~
 8. ~~Shoreline stabilization.~~
 9. ~~Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.~~
 10. ~~Agriculture.~~
- B. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means ~~of to~~ view and/or physical~~ly~~ approach ~~to~~ public waters, and may include interpretive centers and displays.
- C. ~~Where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, the County may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.~~
- D. ~~Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and the maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority.~~
- E. Alternate off-site provision of public access to shorelines may be used upon approval, as a means of offsetting identifiable on-site impacts. If public access is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities ~~may be provided at a location not directly adjacent to the water~~ (such as a viewpoint, observation tower, or other areas serving as a means to view public waters (such as an interpretive center and displays explaining maritime history and industry) ~~may be provided at a location not directly adjacent to the water~~; provided, that visual access to the water is provided.
- F. Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished (RCW 35.79.035 and 36.87.130).
- F.G. Shoreline development by public entities shall include public access measures as part of each development project.
- Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.
- G. ~~Public access shall incorporate the following location and design criteria:~~

Comment [CES68]: Language from WAC

Comment [AP69]: Added for consistency with WAC 173-26-221(4)(d)

Comment [DN70]: Moved from the Site Planning section.

Comment [CES71]: Moved above.

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Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.

Public access shall be located adjacent to other public areas, accesses, and connecting trails, connected to the nearest public street, and include provisions for handicapped and physically impaired persons where feasible.

Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.

Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.

Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

Public amenities appropriate to the use of a public access area such as benches, picnic tables, and sufficient public parking to serve the users shall be provided.

Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste, and other appropriate public facilities.

The minimum width of public access easements shall be 10 feet, unless the administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.

The requirement for public access on a specific site may be fulfilled by:

- Participation in a public access plan incorporated in the program; or
- Provision of facilities specified in a permit approval.

Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.

Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the county auditor's office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.

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Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or nonprofit agency through a formal agreement recorded with the eCounty Auditor's office.

Public access facilities shall be available to the public 24 hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of subsection (B)(1) of this section.

The standard state-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.

23.290.090 Site planning;
Policies.

Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.

Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including, but not limited to, porous paving blocks, porous concrete and other similar materials should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.

Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within 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.

Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.

Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

Regulations.

Comment [DN72]: All non-repetitive regulations have been moved, so this section is no longer necessary.

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Where appropriate new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.

An assessment of the existing ecological functions and/or processes provided by topographic, physical and vegetation characteristics of the site shall accompany development proposals; provided, that proposals for single-family residences shall be exempt from this requirement. Such assessments shall include the following general information:
Impacts of the proposed use/development on ecological processes with clear designation of existing and proposed routes for water flow, wildlife movement and other features;
Infrastructure requirements such as parking, services, lighting and other features, together with the effects of those infrastructure improvements on shoreline ecological functions and/or processes.

Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be utilized to cross wetlands.

Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2009 Low Impact Development Technical Guidance Manual for Puget Sound.

Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.

Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation. Foundations shall be tiered with earth retention incorporated into the structure.

Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.

Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with wildlife movement to/from important habitat areas.

Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified, shall observe critical area regulations and buffers in Chapter 16.16 WCC.

Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.

Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.

Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.

Comment [DN73]: Moved to Ecological Protection and Critical Areas Section (WCC 23.30.020).

Comment [DN74]: Moved to Transportation Section for Shoreline Uses and Modifications (WCC 23.40.190).

Comment [CES75]: Moved to Utilities section.

Comment [DN76]: Moved to 23.30.040 Vegetation Management.

Comment [DN77]: Moved to Water Quality section

Comment [AP78]: Removed to reduce redundancy. This is fully captured in the General Regulation provisions for Ecological Protection and Critical Areas (WCC 23.30.020).

Comment [DN79]: Moved to Ecological protection and critical areas section.

Comment [DN80]: Moved to the Public Access section

Comment [DN81]: This is more applicable as a policy rather than a regulation and is already included as a policy above under former subsection (A)(5).

Comment [DN82]: Moved to Views and Aesthetics 23.30.030

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1 ~~All facilities shall be located and designed to avoid impediments to navigation and to avoid~~
2 ~~depriving other properties of reasonable access to navigable waters. Review and approval by~~
3 ~~the U.S. Coast Guard may be required as a condition of issuance of building or development~~
4 ~~permits to assure compliance. All in-water structures shall be marked and lighted in compliance~~
5 ~~with U.S. Coast Guard regulations.~~

Comment [DN83]: Moved to both the Boating facilities and the Moorage sections.

6 ~~All shoreline use and development shall provide setbacks from adjacent properties in~~
7 ~~accordance with WCC Table 23.90.130(C). Setbacks shall be of adequate width to attenuate~~
8 ~~proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts.~~
9 ~~Fencing or landscape areas may be required to provide a visual screen.~~

Comment [DN84]: This is more of a policy rather than a regulation and is already included above under former subsection (A)(4). Dimensional standards already implement such a policy so this additional regulation is not necessary.

10 H.

Chapter ~~23.100~~23.40 Shoreline Use and Modification Regulations

Comment [AP85]: This chapter has been moved from later in the document (previously number 23.100).

~~23.100~~23.40.010 Shoreline Use and ~~Development~~ Modification.

A. All uses and modifications in shoreline areas shall be subject to the policies and regulations of this program.

B. Table 1, Shoreline Use by Environment Designation generally sets forth the permissible uses within the respective shoreline environment designations in the county. It should be read in close conjunction with the definitions in Chapter 23.60 (Definitions) and the other provisions in this program. The contents of Table 1 provisions are subject to limitations, conditions, and exceptions listed under of each of the categories of this chapter. Such text modifies the requirements of Table 14, and in the event there is a conflict between the use(s) identified in Table 23.100.010 Table 14 and the policies or regulations, the policies and regulations shall prevail apply.

C. Shoreline use and development shall be classified by the ~~administrator~~Director and regulated under one or more of the following applicable sections of WCC Chapter ~~23.100~~23.40 (Shoreline Use and Modification Regulations). Unless otherwise stated, all use and development shall also comply with all of the general policies and regulations of Chapter 23.90 WCC and, if applicable, the policies of Chapter 23.40 WCC. A proposed development may contain different types of uses and/or modifications, and may be classified under and be subject to multiple categories (e.g., a marina may fall under and be subject to Marinas, Moorage, Commercial, and Industrial, depending on what is proposed).

D. ~~(b) In the Aquatic shoreline environment designation, only Wwater-dependent uses shall be allowed only,~~ subject to the use and development regulations of the abutting upland shoreline area environment designation.

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Table 1. WCC Table 23.100.010^(a)

Table 1. Shoreline Use by Environment Designation

Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Agriculture										
<u>Agriculture – General</u>	P ⁽⁺⁾	X	P ⁽⁺⁾	P ⁽⁺⁾	P*	P	P	P⁽⁺⁾ X*	X	<u>P</u>
<u>Liquid Manure Storage Facilities and Spreading</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Animal Feeding Operations and Confined Animal Feeding Operations (AFOs/CAFOs)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
Aquaculture										
<u>Aquaculture – General</u>	P	P ⁽⁺⁾	P	P ⁽⁺⁾	P ⁽⁺⁾	P	P	PX⁽⁺⁾	<u>Psee upland</u>	<u>P</u>
Commercial Salmon Net Pen Facilities	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	<u>X</u>
Commercial Geoduck Aquaculture	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C*</u>	<u>C</u>
Marinas and Launch RampsBoating Facilities										
<u>Marinas, including accessory structures</u>	P	P	C	P	P	<u>PX</u>	C	X	<u>Psee upland</u>	<u>X</u>
<u>Launch ramps – Marina</u>	P	P	<u>PC</u>	P	P	<u>PX</u>	<u>PC</u>	X ⁽⁺⁾	<u>Psee upland</u>	<u>X</u>
<u>Launch ramps – Public</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X/P*</u>	<u>see upland</u>	<u>P</u>
<u>Launch ramps – Residential</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>see uplandX</u>	<u>X</u>
<u>Accessory Structures</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>C</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>C</u>	<u>X</u>	<u>see upland</u>	
Covered Over-Water	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P ⁽⁺⁾	P ⁽⁺⁾

Comment [CES86]: Making consistent w/ policies for Natural

Comment [CES87]: Making consistent w/ policies for Natural

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^{CH}	Cherry Point Mgmt Area
Structures										
Commercial										
<u>Water-Dependent Commercial</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>X</u>	<u>see upland</u>	<u>P</u>
<u>Water-oriented Related and Water-Enjoyment Commercial</u>	P	P ^{CH}	C ^{CH}	P	P	P ^{CH}	C ^{CH}	X	X ^{CH}	<u>P</u>
Non-Water-Oriented Commercial	C	C ^{CH}	C ^{CH}	C	C	C ^{CH}	C ^{CH}	X	X	<u>C</u>
Dredging and Dredge Material Disposal										
<u>Dredging</u>	C	C	C	C	C	C	C	X/ <u>P*</u>	C ^{CH}	X/ <u>C*</u>
<u>Maintenance Dredging</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>P*</u>
<u>Dredge Material Disposal</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>P^{CH}</u>	<u>X^{CH}</u>	<u>P</u>
Essential Public Facilities										
	C	C	C	C	C	C	C	X	C	<u>C</u>
Landfill and Excavation										
	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>PH/CP/*C</u>	X ^{CH}	<u>CH/XC*</u>	X/ <u>C*</u>
Flood Control-Hazard Reduction and Instream Structures										
<u>Flood Hazard Reduction Control and Instream Structures – General</u>	P	P	P	P	P	P	P	X	<u>P see upland</u>	<u>P</u>
Channelization or Dams for <u>Hazard Reduction</u> Flood Control	P	P	X	P	C	C	X	X	<u>see upland</u> ^P	<u>P</u>

Comment [CES88]: Updated to comply with WAC 173-26-231(3)(c), which requires a CUP for fill waterward of the OHWM.

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Forest Practices										
<u>Outside of shorelines of statewide significance</u>	<u>XP</u>	<u>XP</u>	<u>XP</u>	<u>XP</u>	P	P	P	C(+)	see uplandX	<u>P</u>
<u>Within shorelines of statewide significance</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Industrial and Port										
<u>Water-Dependent Industrial and Port Development</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P*</u>	<u>P/C*</u>	<u>X</u>	<u>X</u>	see upland	<u>P</u>
<u>Water-oriented-Related and Water-Enjoyment Industrial and Port development</u>	P	X(+)	X	X	<u>P*</u> +	<u>P+</u> / <u>C*</u>	X	X	<u>P-/CHX</u>	<u>P(+/-)</u>
<u>Existing legal fossil-fuel refinery operations or existing legal fossil fuel transshipment facilities</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>P</u>
<u>Expansion of existing legal fossil-fuel refinery operations or expansion of existing legal fossil fuel transshipment facilities</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>
<u>New or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>
Non-Water-Oriented Industrial and Port Development	C	X	X	X	C	C(+)	X	X	X	X

Comment [CES89]: Amended to be consistent w/ WAC 173-26-241(3)(e)

Comment [CES90]: Inserted per Council's pending draft fossil fuel amendments.

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	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
<u>Terminals for Passenger-Only Vessels</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>see upland</u>	<u>C</u>
<u>In-Water Log Storage</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>CH</u>	<u>X</u>
<u>Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation</u>	<u>G</u>	<u>X</u>	<u>G</u>	<u>G</u>	<u>G</u>	<u>G</u>	<u>G</u>	<u>X</u>	<u>see upland</u> <u>P</u>	<u>X</u>
Institutional										
	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>X</u>
Land Division										
<u>Boundary Line Adjustments and Lot Consolidation</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<u>Short Plats</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<u>Subdivisions</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
Mining										
<u>Mining – General</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>CH+X</u>	<u>C</u>
<u>Surface oil or gas drilling</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
Moor<u>age</u> Structures<u>age</u>: Docks, Piers, and Mooring Buoys										
<u>Private Individual DeckMoorage (other than mooring buoys) – Freshwater</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	<u>X</u>
<u>Private Individual DeckMoorage (other than mooring buoys) – Marine</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>see upland</u>	<u>X</u>

Comment [CE591]: Moved to Utilities

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Private Shared Deck Moorage	P	C	P	P	P	P	P	X	see upland	X
Private and Shared Moorage	P	G	PH/C	P	P	P	PH/C	X	P	
Public Moorage (other than mooring buoys)	C	C	C	C	C	C	C	X	see uplandP	X
Commercial Moorage (other than mooring buoys)	C	X	C	C	C	C	C	X	see uplandP	X
Industrial Moorage (other than mooring buoys)	C	X	X	X	C	C	X	X	see uplandP	Existing: P New: X
Covered Moorage Accessory to Permitted Moorage	GP	GP	X	GP	X	X	X	X	see uplandP	C
Float Plane Moorage Accessory to Permitted Moorage	C	C	C	C	C	C	C	X	see uplandP	C
Recreational Mooring Buoys	P	P	P	P	P	P	P	X	see upland	XP
Recreational										
Water-Oriented Recreation	P	P	P	P	P	P	P	P	P	P
Non-Water-Oriented Recreation	P	P	C	P	C	C	C	C	X	X
Residential										
Single-Family	P	P	P	P	P	P	P	X	X	XP
Duplex	P	P	P	P	P	P	P	X	X	X

Comment [CES92]: Inserted per Council's pending draft fossil fuel amendments.

Comment [AP93]: Added new categories/rows to provide greater clarity.

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
Multi-Family	P	P	C	P	P	X	C	X	X	X
Over-Water Residences	X	X	X	X	X	X	X	X	X	X
Restoration and Enhancement										
	P	P	P	P	P	P	P	P	P	P
Shoreline Stabilization*										
Groins	G ⁺ X	G ⁺ X	X	G ⁺ X	G ⁺ X	G ⁺ X	X	X	G ⁺ X	X
Breakwaters and Jetties	C ⁺	C ⁺	C ⁺ +	C ⁺	C ⁺	C ⁺	C ⁺ +	X	C ⁺	C ⁺ +
Bulkheads and Revetments	P ⁺	P ⁺	C ⁺	P ⁺	P ⁺	P ⁺	C ⁺	X ⁺	X ⁺	C ⁺
Drift Sills	P	P	C	P	P	P	C	X	See upland	C
Gabions	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X	X	X/C*
Revetments	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X/C*	X	X*	X/C*
Bioengineering Approaches & other Soft-Shore Measures	P	P	P	P	P	P	P	P ⁺ +	P ⁺ +	P
Signs										
	P	P	P	P	P	P	P	X ⁺	P ⁺ +	P
Transportation										
Transportation Facilities serving a specific approved use*	P	P	P ⁺	P	P	P	P ⁺	X ⁺	P ⁺ -C ⁺	P ⁺
Transportation Facilities not serving a specific approved use*	C	C	X	C	C	C	X	X	C	X
Utilities										

Comment [CES94]: Changed to prohibited in favor of using drift sills, which is an added modification, below.

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Accessory Utilities	P	P	P	P	P	P	P	P	P	P
Local Utilities distribution facilities	P(-)(+)	P(-)(+)	P(-)(+/-)C*(-)	P(-)(+)	P(-)(+)	P(-)(+)	P(-)(+/-)C*(-)	X(-)	P(-)(+/-)C*(-)/X*	P(-)(+)
Regional transmission facilities utilities	C(-)(+)	C(-)(+)	C(-)(+)	C(-)(+)	C(-)(+)	C(-)(+)	C(-)(+)	X(-)	C(-)(+)/X*	C(-)(+)
Desalinization Facilities	C(-)	C(-)	C(-)	C(-)	C(-)	C(-)	C(-)	X(-)	C(-)(+)	C(-)
Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation	C	X	C	C	C	C	C	X	see upland	X

Comment [AP95]: Revised per Scoping Document, Item #17i.

Comment [CES96]: Moved from Industrial and Port

P = Permitted, ~~may be~~ subject to policies and regulations of this program ~~and subject to shoreline substantial development permit requirements.~~

C = Shoreline conditional use, subject to policies and regulations of this program ~~and may be subject to shoreline substantial development permit requirements.~~

(-) Subject to limitations.

(+) Subject to conditions.

(*) Subject to exceptions.

(a) In the event that there is a conflict between the use(s) identified in Table 23.1040.010 and the policies or regulations in Chapters 23.230, 23.390, or 23.4100 WCC, the policies and regulations shall apply.

(b) Aquatic: Water dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation.

X = Prohibited.

N/A = Not applicable.

* = Refer to the regulations under this use and modification category for certain caveats.

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23.410.020 Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage.

A. Policies. Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purpose of the shoreline area designation.

B. Regulations.

A. Table 2. Bulk Regulations for Shoreline Development, Table of Bulk Regulations–WCC Table 23.90.130(C) establishes the minimum required dimensional requirements for development, uses, and activities including all structures and substantial alteration of natural topography. Dimensional standards relating to critical areas are governed by the provisions of WCC Chapter 16.16. Dimensional standards specified in this program shall not exceed the geographic limit of the Act's jurisdiction. Additional standards may be established in WCC, Chapter 23.10023.40 (Shoreline Use and Modification Policies and Regulations).

B. Where the bulk provisions of other County regulations (e.g., Title 20, Zoning) differ, the stricter shall apply.

A-C. All measurements except height and area shall be measured outward on the horizontal plane and in the direction that results in the greatest dimension from property lines, or from other features specified.

A. Except as otherwise stated, the Whatcom County Comprehensive Plan, zoning regulations, critical areas regulations, flood control regulations, subdivision regulations, health regulations and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this program conflict with provisions of other county regulations, the more protective of shoreline resources shall prevail.

B. All use and development activities shall conform to all applicable plans, policies, standards, guidelines and regulations of other agencies with jurisdiction in shoreline areas.

D. Setbacks.

1. Setbacks shall be pursuant to Table 2; except as allowed by subsection (D)(2).

2. Common-Line Setback for Single-Family Residences. For the purpose of accommodating views for new residences while protecting predominant shoreline views of the water from legally existing primary residences in developed residential areas, the shoreline buffer (setback) may be modified for primary residential structures in the Urban, Shoreline Residential, and Rural environments (only), consistent with the following. The presence of nearby shacks, sheds, or dilapidated structures does not constitute the existence of a residence, nor can such structures be used to determine a common-line setback.

a. Where there are legally established single-family residential primary structures within 150 feet on both sides of the proposed residence, the setback shall be determined as the greater of either:

- i. A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or
- ii. A common line calculated by the average of both adjacent residences' existing setbacks.

Comment [AP97]: Moved from the General Regulations section (previously WCC 23.90.130).

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Comment [CES98]: Incorporated from former Appendix F of Title 23.

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- b. Where there is a legally established single-family residential primary structure within 150 feet on only one side of the proposed residence, the common line setback shall be determined as the greater of either:
- A common line drawn between nearest corner of the foundation closest to the sideyard property line of the proposed residence to the adjacent residence and the nearest point of the standard buffer on the adjacent vacant lot, or
 - A common line calculated by the average of the adjacent residence's setback and the standard buffer for the adjacent vacant lot.
- c. When the use of a common-line setback is allowed, compliance with buffer width reduction and mitigation pursuant to WCC 23.30.010 (Ecological Protection) shall be required.
- d. In no case shall development be located waterward of the common-line setback or a minimum of 50 feet from the ordinary high water, unless approved to be closer as part of a constrained lot review WCC 23.40.170(C) (Residential).
3. Sideyard setbacks shall be measured from all property lines that intersect the shore side of a lot or tract; provided, that for development not requiring a wider shoreline buffer, five feet of the total required sideyard setbacks may be provided on one side and the balance on the other side,
1. and provided further, that, for a single-family residence or duplex on a nonconforming lot that does not provide sufficient area to meet the standard dimensional requirements for buffers and setbacks, the nonconforming provisions of WCC 23.50.070 apply.
- B-E. Height. Table 23.90.130(C) establishes the maximum allowed building height for all primary and accessory structures within the shoreline jurisdiction. Height is measured according to the definition in WCC 23.60.080(7)++0; provided, that:
- provided further, that, pursuant to RCW 90.58.320, and except as allowed by subsections (2 - 4) of this section, no permit may be issued for any new or expanded building or structure more than 35 feet above average grade level that will obstruct the view of a substantial number of residences on or adjoining such shorelines except where the program does not prohibit such development and only when overriding considerations of the public interest will be served. The applicant/proponent shall be responsible for providing sufficient information to the administrator to determine that such development will not obstruct the view of a substantial number of residences on or adjoining such shorelines whether this standard is met.
 - In the Urban Resort shorelines designation only, commercial and multifamily unit residential development more than 100 feet from the ordinary high water mark may exceed the standard height limit, up to a maximum height of 75 feet when approved with-through a shoreline conditional use permit, up to a maximum height of 75 feet; provided, that specific location design and other conditions may be imposed to meet the policies and regulations of this program;
 - In the Urban Resort shoreline environment designation, lodging developments over 35 feet in height may be allowed. However, due to the potential for adverse impacts upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:

Comment [DN99]: Now covered by nonconforming lot section (23.50.030)

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- a. Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.
 - b. Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.
 - c. Recreational needs of building clientele must be provided for through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases.
 4. In the Cherry Point Management Area, cranes, gantries, mobile conveyors, light standards, and similar equipment necessary for the functions of water-dependent uses or the servicing of vessels may extend above the applicable maximum height limit provided in Table 1, provided that such structures shall be designed to minimize view obstruction.
 5. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the environment designation.
- F. Open Space. Open space shall be provided for certain types of development, use, or activities. The amount of open space, as a percentage of lot coverage, shall be as provided in Table 2, below.
- G. Uses Allowed in Buffers and Setbacks. The following development activities are ~~not subject to~~ allowed in buffers and setbacks; provided, that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline functions and processes; and provided further, that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation:
1. Those portions of approved private water-dependent development or public water-oriented development that require a location waterward of the ordinary high water mark of streams, rivers, lakes, ponds, marine shorelines, associated wetlands, and/or within their associated buffers.
 2. Accessory and underground utilities.
 3. Necessary power poles and transmission towers are not subject to height limits but shall not be higher than necessary to achieve the intended purpose.
 4. Modifications to existing development that are necessary to comply with environmental requirements of any state or federal agency, when otherwise consistent with this program; provided, that the decision maker determines that the facility cannot meet the dimensional standard and accomplish the purpose for which it is intended and the facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible, and the modification is in conformance with the provisions of Chapter WCC 23.50-070 (Nonconforming Uses, Structures, and Lots) for nonconforming development and uses.
 5. Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development.
 6. Stairs and walkways no greater than four feet in width and no higher than 18 inches in height above grade, except for railings; provided, that where ADA requirements apply, such facilities may be increased to five feet in width and the height requirement may be waived to

Comment [CES100]: Moved from 23.40.040 (Commercial)

Comment [CES101]: Added to accommodate equipment necessary for operations of permitted uses.

Comment [CES102]: Moved up from below

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- provide for site-specific ADA compliance. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.
7. Shared moorages shall not be subject to sideyard setbacks when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility.
8. Retaining walls or similar slope stabilization structures, when associated with an approved shoreline use or development consistent with the provisions of this program and demonstrated to be necessary for the approved use or development through a geotechnical analysis.
9. Where permitted, fences, walls other than retaining walls, hedges and other similar structures shall be limited to four feet in height within shoreline setbacks and six feet in height outside of shoreline setbacks; provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations.
10. Signs.
- a. On publicly owned park properties, interpretive, wayfinding, and park identification signs.
- b. Signage required by state or federal security requirements.
11. Passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails; provided, that all the criteria in WCC 23.40.160(A)(6) (Recreation) are met.
12. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the designation. Accessory structures as allowed by 16.16.720(G)(4) Habitat Conservation Areas – Use and Modification.
13. Residential structures which share a common wall with the primary structure shall be considered an extension of the primary structure (i.e., an attached garage) and may be built to the maximum height for the designation.
14. Height limits contained in this program for accessory structures in the Rural, Resource, or Conservancy shoreline environments, accessory structures that are 150 feet or greater from the OHWM of the Nooksack or Sumas Rivers may be built to the maximum height for the designation. shall not apply within shoreline jurisdiction of the Nooksack and Sumas Rivers beyond 150 feet from the OHWM.

Comment [AP103]: Revised per Parks comment (Scoping Document Items #13b, 13c, and 14a)

Comment [AP104]: Added per Scoping Document, Item #17e.

Comment [AP105]: Added for clarity per Scoping Document, Item #17e.

Comment [AP106]: Added per Scoping Document, Item #16b.

Comment [AP107]: Revised per Scoping Document, Item #13d.

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Table 2. Bulk Regulations for Shoreline Development ~~WCC Table 23.90.130(C) Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development~~

Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Agriculture										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040 Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3)	20'	N/A	20'	20'	20'	20'	20'	N/A	N/A	20'
Maximum Height Limit ^(4,5) Height Limit (a/b)	35'	N/A	35' / 35'	35' / 35'	35' / 35'	35' / 35'	35' / 35'	N/A	N/A	35'
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Aquaculture										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040 Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3)	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	20'
Maximum Height Limit ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	10'	20' / 30'
Open Space %	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	30%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Commercial										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040 Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3,6)	5' +	5' +	10' +	10' +	10' +	10' +	15' +	N/A	N/A	15'
Maximum Height Limit ^(4,5) Height Limit (a/b/g)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	15'	35'
Open Space % (c/d)	30% / 15%	40% / 20%	60% / 30%	30% / 15%	50% / 25%	50% / 25%	60% / 30%	N/A	N/A	30% / 15%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Boating Facilities: Marinas and Launch Ramps										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040 Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3)	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	20'
Maximum	25' /	25' / 35'	25' / 35'	25' / 35'	20' /	20' / 25'	15' / 25'	N/A	N/A	25' / 35'

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Height ^(4,5) Height Limit (a/b)	35'				25'					
Open Space % (c/d)	15%	30%	50%	15%	30%	30%	50%	N/A	N/A	15%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Mining										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per-Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
• Side Setback ^(2,3)	N/A	N/A	N/A	N/A	50'	50'	100'	N/A	N/A	50'
Open Space %	N/A	N/A	N/A	N/A	50%	50%	50%	N/A	N/A	50%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Industrial and Port Development										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per-Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
• Side Setback ^(2,3)	30'	10'	30'	30'	40'	40'	60'	N/A	N/A	40'
Maximum Height ⁽⁵⁾ Height Limit (a/b)	35' / 35'	15' / 25'	20' / 30'	35' / 35'	25' / 35'	25' / 35'	25' / 35'	N/A	20'	25' / 35'
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	30%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Land Division										
Shoreline Buffer ⁽¹⁾	Per Shoreline Buffer Standards in WCC 23.30.040									
Side Setback ^(2,3)	Based on shoreline use									
Maximum Height ⁽⁵⁾ (a/b)	Based on shoreline use									
Open Space %	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	30%
Impervious Surface Coverage	Per the underlying zone, WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone, WCC Title 20.		
Recreation										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per-Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
• Side Setback ^(2,3)	10'	10'	15'	10'	15'	15'	20'	20'	N/A	20'

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
*Maximum Height ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	20' / 35'	25' / 35'	20' / 35'	20' / 35'	15' / 25'	10' / 15'	15'	20' / 35'
Open Space % (c/d)	30% / 25%	40% / 40%	50% / 60%	30% / 25%	50% / 60%	50% / 60%	60% / 75%	95%	N/A	30% / 25%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Residential – Single-Family and Duplex										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Maximum Density ⁽⁶⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	1:1 ac
*Side Setback ^(2,3)	5'	5'	10'	5'	10'	10'	15'	15'	N/A	20'
*Maximum Height ^(4,5) Height Limit (a/b)	30' / 30'	30' / 30'	30' / 35'	30' / 30'	30' / 35'	30' / 35'	30' / 35'	30' / 35'	N/A	30' / 35'
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Residential – Multifamily (3 – 6 units)										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Maximum Density ⁽⁶⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	N/A
*Side Setback ^(2,3,6) (e/f)	5' →	5' →	15' →	5' →	15' →	15' →	20'	N/A	N/A	N/A
*Maximum Height ^(4,5) Height Limit (a/b/g)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	N/A
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	N/A
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		N/A
Residential – Multifamily (7+ units)										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Maximum Density ⁽⁶⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	N/A
*Side Setback ^(2,3,6) (e/f)	5' →	5' →	15' →	5' →	15' →	15' →	20'	N/A	N/A	N/A
*Maximum Height ^(4,5) Height Limit (a/b/g)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	N/A
Open Space	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	N/A

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					↕↕ 10% ⁽⁹⁾	↕↕ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		N/A
Residential – Decks and Accessory Structures										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
*Side Setback ^(2,3)	5'	5'	10'	5'	10'	10'	15'	15'	N/A	
*Height Limit ⁽⁴⁾	15'	15'	15'	15'	15'	15'	15'	15'	N/A	
Transportation Facilities										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Signs										
**Shoreline Buffer ^(1,7) Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
*Side Setback ^(1,2,3)	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	10'
*Maximum Height ^(4,5) Height Limit (a/b)	10' / 15'	10' / 15'	6' / 10'	10' / 15'	6' / 10'	6' / 10'	6' / 10'	N/A	10'	6' / 10'
Utilities										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
*Side Setback ^(1,2,3)	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	10'
*Maximum Height ^(4,5) Height Limit (a/b)	20' / 35'	20' / 35'	20' / 20'	20' / 35'	20' / 20'	20' / 20'	20' / 20'	N/A	N/A	20' / 20'
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	50%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					↕↕ 10% ⁽⁹⁾	↕↕ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
All Other Development										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
*Side Setback ^(2,3)	10'	10'	10'	10'	15'	15'	20'	N/A	N/A	
*Maximum Height ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	20' / 30'	20' / 30'	20' / 30'	20' / 30'	20' / 30'	N/A	N/A	
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	
Impervious Surface	Per the underlying zone district , WCC Title 20.					↕↕	↕↕	Per the underlying		

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Coverage						10% ⁽⁹⁾	10% ⁽⁹⁾	zone district , WCC Title 20.		

Footnotes:

(1) = Water dependent development shall have a buffer of zero feet. Unless specifically exempted from setback requirements in WCC 23.40.020, minimum required setbacks for permanent freestanding signs are 50 feet from the OWHM where not subject to critical areas or buffers. Other non-water dependent uses that may be allowed within the shoreline buffer are identified in WCC 23.40.020(G).

(2) = Roof overhangs or other architectural features shall not project further than 18 inches into the side setbacks.

(3) = A side setback of 5 feet applies to residential decks and accessory structures 15 feet tall or less.

(4) = Maximum height for accessory structures is 15 feet, except as provided in WCC 23.40.020(E).

(5) = Maximum height is as shown, except as provided in WCC 23.40.020(E).

(6) = Add five feet of setback for each five feet of height over 15 feet.

(7) = See WCC 23.40.200 (Signs) for additional allowances and restrictions.

(8) = Maximum allowable development density shall be calculated pursuant to the applicable underlying zone district, per WCC Title 20; provided, that maximum allowable density in dwelling units/acre shall not exceed the density ratios identified above. Density shall be calculated based on the total area of the parent parcel including those areas located outside of shoreline jurisdiction. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in density calculations.

(9) = Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

(a/b) = "a" Applies to structures within 100 feet of OHWM or wetland edge.

"b" = Applies to structures more than 100 feet from OHWM or wetland edge.

(c/d) = "c" Applies to development that includes overnight lodging.

"d" = Applies to development that does not include overnight lodging.

(e/f) = "e" Applies to structures not more than 35 feet high.

"f" = Applies to structures more than 35 feet high.

~~g = Height limit may be increased to 25 feet via conditional use permit – see WCC 23.40.140(8)(k).~~

~~* = Add five feet of setback for each five feet of height over 15 feet.~~

~~** = Maximum height for accessory buildings is 15 feet.~~

~~*** = See WCC 23.100.140(B)(10) through (14).~~

~~* = Roof overhangs or other architectural features shall not project further than 18 inches into the side yard setbacks.~~

~~Q = Maximum allowable development density shall be calculated pursuant to the applicable underlying zone district, per WCC Title 20; provided, that maximum allowable density in dwelling units/acre shall not exceed the density ratios identified above. Density shall be calculated based on the total area of the parent parcel including those areas located outside of shoreline jurisdiction. Submerged lands and/or tidelands within the boundaries of~~

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any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in density calculations.

0-0 = Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.

N/A = Not applicable.

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23.40.030 General Shoreline Use and Modification Regulations

A. ~~Proposed uses and developments shall limit the number and extent of shoreline modifications.~~

Comment [CES108]: From WAC 173-26-231(2)(b)

B. Shoreline uses and developments that are water-dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses.

~~B.C.~~ Interim non-water-dependent uses authorized as a shoreline conditional use may be allowed to respond to short-term market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.

~~G.D.~~ Shoreline uses and developments shall be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

~~D.E.~~ Navigable waters shall be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.

F. Shoreline uses and developments shall be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

Comment [DN109]: Moved from the General Regulations section since this pertains specifically to uses and mods.

G. ~~Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and not placed waterward of the principal use.~~

Comment [CES110]: Moved from 23.90.030 Ecological Protection

~~E.H.~~ Nothing in the ~~policies or~~ regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas.

Comment [AP111]: Moved from Aquaculture section.

I. ~~No flood control works or instream structures~~ shoreline use or development may commence without the ~~proponent/developer~~ having obtained all applicable federal, state, and local permits and approvals, including but not limited to a Hydraulic Permit Application (HPA) from the State Department of Fish and Wildlife.

Comment [AP112]: Moved and revised to apply more universally.

J. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.

Comment [CES113]: Moved from 23.90.030 Ecological Protection

K. Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to or from important habitat areas consistent with the applicable provisions of this program; provided, that the Director may exempt security fencing associated with residential, industrial, and/or commercial developments from this requirement on a case-by-case basis.

Comment [CES114]: Moved from 23.90.030 Ecological Protection

23.410.030-040 Agriculture.

A. Policies.

1. This program recognizes the importance of agriculture in Whatcom County and supports its continued economic viability. This program allows for ongoing agricultural activities and should protect agricultural lands from conflicting uses such as intensive or unrelated residential.

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industrial or commercial uses, while also maintaining shoreline ecological functions and processes.

2. Agricultural uses and development in support of agricultural uses should be conducted in such a manner as to assure no net loss of shoreline ecological functions and processes and avoid substantial adverse impacts on other shoreline resources and values.

3. Conversion of agricultural uses to other uses should comply with all policies and regulations for nonagricultural uses.

B. Regulations.

A. General.

1. Agricultural activities within shorelines are governed by the critical areas regulations in WCC Chapter 16.16, including the conservation program on agricultural lands (CPAL) provided for in ~~therein~~ WCC 16.16.290.

2. Accessory uses and buildings shall observe critical area buffer requirements ~~as defined in (see~~ WCC Chapter 16.16); except that utility development associated with an approved agriculture activity or development may encroach on critical area buffers where it can be demonstrated that the proposed utility development is essential to the agriculture activity or development and that such development complies with the general provisions of WCC Chapter 16.16; such utilities shall be placed underground where feasible.

3. Intentional discharge of any manure storage facility into ground or surface water is prohibited.

4. Feedlots are prohibited in critical areas and their buffers ~~as defined in (see~~ WCC Chapter 16.16).

5. Conversion of agricultural uses to other uses shall comply with the provisions of WCC Chapter 16.16 and this program for the proposed use.

B. Regulations for Specific Shoreline Environment Designations.

5.1. In the Natural shoreline environment, only low-intensity agricultural activities are permitted; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation.

C. Shoreline Area Regulations.

1. Urban. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.

2. Urban Resort. New agricultural activities are prohibited.

3. Urban Conservancy. Agricultural activities are permitted subject to policies and regulations of this program, except that new animal feeding operations/concentrated animal feeding operations (AFO/CAFOs) are not permitted.

4. Shoreline Residential. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.

5. Rural. Agricultural activities are permitted subject to policies and regulations of this program.

6. Resource. Agricultural activities are permitted subject to policies and regulations of this program.

7. Conservancy. Agricultural activities are permitted subject to policies and regulations of this program.

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~~8. Natural low-intensity agricultural activities are permitted subject to policies and regulations of this program; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation. All other agricultural activities are prohibited.~~
~~—Aquatic. New agricultural activities are prohibited. Farming of fin fish, shellfish and management of other aquatic products are subject to the policies and regulations for aquaculture under WCC 23.100.030.~~

Comment [CES115]: Addressed in use table now.

23.440.040-050 Aquaculture.

~~Aquaculture in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

Comment [CES116]: Most amendments shown herein are to make this section consistent w/ WAC 173-26-241(3)(b)

~~Nothing in these policies or regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas. See also the policy in subsection (A)(8) of this section and the regulation in subsection (B)(1)(u) of this section.~~

Comment [AP117]: Moved to Use and Mods General Regs

A. Policies.

~~A. Aquaculture is a water-dependent use and, when consistent with control of pollution and avoidance of adverse impacts to the environment and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC 173-26-241(3)(b)).~~

~~B. Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.~~

~~C. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require no structures, submerged structures or intertidal structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.~~

~~D. Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.~~

~~E. Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.~~

~~F. Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential~~

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contribution of antibiotic-resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA-listed species should not be permitted.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

B. Regulations.

A. General Site Design and Operation.

1. Aquaculture activities proposed within Shorelines of Statewide Significance shall be subject to, first, the policies contained in Chapter 23.40 WCC, Shorelines of Statewide Significance, and, second, the policies and regulations contained in this section.

2.1. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site.

3.2. The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.

4.3. Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact existing kelp beds or other macroalgae, eelgrass beds, critical saltwater habitat, or other fish and wildlife habitat conservation areas.

Comment [CES118]: Covered by general use & mod regs.

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5-4. Aquaculture activities, ~~which-that~~ would have a significant adverse impact on natural, dynamic shoreline processes or ~~which-that~~ would result in a net loss of shoreline ecological functions, shall be prohibited.

6. ~~Aquaculture uses and facilities shall be located at least 600 feet from any national wildlife refuge lands; except that:~~

i. ~~Projects involving substantial substrate modification and/or fish net pens, if authorized, shall be located 1,500 feet or more from such areas.~~

ii. ~~Lesser distances may be authorized by permit if it is demonstrated by the applicant/proponent that the wildlife resource will be protected and if the change is supported by the WDFW, the Lummi Nation and/or Nooksack Tribe.~~

iii. ~~Greater distances may be required if supported by the reviewing resource agencies and/or where there is sound evidence demonstrating that a greater distance is required.~~

7-5. Unless otherwise provided in the shoreline permit issued by the County, repeated introduction of an approved organism in the same location shall require approval by the County only at the time the initial aquaculture use permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Whatcom County regardless of whether it is a native or resident organism within the county and regardless of whether it is being transferred from within or without the waters of Whatcom County.

8-6. The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s) through the permit review process.

B. Site Design and Operation.

1. Aquaculture ~~practices~~ shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.
2. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be removed or repaired promptly by the owner, including when a business ceases operations. Where any structure might constitute a potential hazard to the public in the future, the County shall require the posting of a bond commensurate with the cost of removal or repair. The County may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in 30 days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.
3. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.
4. Predator control shall not involve the killing or harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and three-foot-high fencing or netting for otters. The use of other nonlethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

Comment [AP119]: Removed, since these rules are identified in Ecology's guidance as an "obsolete net pen recommendation."

Local governments should use caution relying on other recommendations of the 1986 interim net pen guidelines and related environmental impact statement (Washington Department of Fisheries, 1990). The interim guidelines document is largely out of date. Ecology has reviewed the original rationale for the 1986 guidelines and found many recommendations are obsolete, unnecessary or inadequate given today's operations (Appendix 4).

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5. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (Chapter 90.48 RCW). No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.
 6. No processing of any aquaculture product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be subject to the ~~policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines)~~ and regulations of WCC ~~23.40-100~~23.40.120 (Industrial and Port Development), in addition to the regulations in this section.
 7. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided, that in locations where the visual impact of the proposed aquaculture structures will be minimal, the County may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant/proponent. Materials ~~which that~~ are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high water mark.
 8. The County shall reserve the right to require aquaculture operations to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not ~~be required to~~ duplicate requirements of other agencies.
 9. Where aquaculture activities are authorized to use ~~public County~~ facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities.
- C. Additional Standards for Net Pens.
1. Fish net pens and rafts shall meet the following criteria in addition to the other applicable regulations of this section:
 - a. Fish net pens shall meet, at a minimum, state-approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive requirement shall prevail.
 - b. Fish net pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed. Such operations shall not use chemicals or antibiotics.
 - c. Aquaculture proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquaculture facility that includes net pens or rafts; provided, that a lesser distance may be authorized if the applicant/proponent can demonstrate that the proposal will be consistent with the environmental and aesthetic ~~policies and objectives~~ of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines). If a lesser distance is

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requested, the burden of proof shall be on the applicant/proponent to demonstrate that the cumulative impacts of existing and proposed operations would not be contrary to the policies of the Comprehensive Plan and regulations of this program.

- d. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.
- e. In the event of a significant fish kill at the site of a net pen facility, the fin fish aquaculture operator shall submit a timely report to the Whatcom County Health Department, Environmental Health division, and the Whatcom County Planning and Development Services Department stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.

2. Commercial salmon net pen facilities shall not be located in Whatcom County waters, except for limited nonprofit penned cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks when such activities involve minimal supplemental feeding and no use of chemicals or antibiotics shall not be considered commercial salmon net pen facilities and may be permitted.

Comment [AP120]: This prohibition is already covered by the Use Table, so it has been removed from the text here. The language for the exception to the prohibition remains.

D. Additional Standards for Commercial Geoduck Aquaculture.

1. Commercial geoduck aquaculture shall only be allowed where sediments, topography, land, and water access support geoduck aquaculture operations without significant clearing or grading.

Comment [AP121]: Updated per Periodic Review Checklist, Item 2011.b, and Scoping Document, Item #1f.

2. Shoreline conditional use permits are required for new commercial geoduck aquaculture and existing aquaculture being converted to commercial geoduck aquaculture. However, shoreline conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted and all subsequent cycles of planting and harvest shall not require a new shoreline conditional use permit.

3. A substantial development permit is not required for the planting, growing, and harvesting of farm-raised geoduck clams unless a specific project or practice causes substantial interference with normal public use of the surface waters.

Comment [AP122]: Revised language for clarity.

Shoreline conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

4. A single shoreline conditional use permit application may be submitted for multiple sites within an inlet, bay, or other defined feature, provided the sites are all under control of the same applicant and under the County's shoreline permitting jurisdiction.

E. Additional Standards for Experimental Aquaculture.

1. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, baseline and periodic operational monitoring by a County-approved consultant (unless otherwise provided for) may be required, at the applicant's/proponent's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant adverse environmental impacts that cannot be adequately mitigated.

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2. Aquaculture developments, not including net pens, approved on an experimental basis shall not exceed five acres in area (except land-based projects and anchorage for floating systems) and three years in duration; provided, that the County may issue a new permit to continue an experimental project as many times as is deemed ~~necessary and~~ appropriate.

3. ~~New~~ aquatic species that are not previously cultivated in Washington State shall not be introduced into Whatcom County salt ~~waters~~ or freshwaters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington Department of Health. In saltwaters, the County shall not issue permits for projects that include the introduction of such organisms until it has also received written comment from the Marine Resources Committee, the Lummi Nation, and the Nooksack Tribe; provided, that such comment is received in a timely manner. This regulation does not apply to Pacific, Olympia, Kumamoto, Belon, or Virginica oysters; Manila, Butter, or Littleneck clams; or geoduck clams.

B-F. Supplemental Application Requirements – General Aquaculture.

1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), Applications for aquaculture use or development shall include ~~in their applications~~ all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following:

a. A site plan map including:

- i. The perimeter of the proposed aquaculture operations area.
- ii. Existing bathymetry depths based on mean lower low water (MLLW datum).
- iii. Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications. If there are shore stabilization structures, provide the beach elevation at the toe of the structure and the top of the structure (MLLW datum).
- iv. Areas where specific substrate modification will take place or structures will be constructed or installed.
- v. Access provisions for barges or track equipment.
- vi. Location of storage or processing structures or facilities.

b. A baseline description of existing conditions, including best available information on:

- i. Water quality.
- ii. Tidal variations.
- iii. Prevailing storm wind conditions.
- iv. Current flows.
- v. Flushing rates.
- vi. Littoral drift.
- vii. Areas of differing substrate composition.
- viii. Areas of aquatic, intertidal, and upland vegetation complexes. A vegetation habitat survey must be conducted. WDFW must be contacted prior to the survey to ensure it is conducted according to their most current eelgrass/macroalgae survey guidelines.
- ix. Existing shoreline or water uses and structures.

Comment [CES123]: All general application requirements have been moved into one general section. Subsections have Items specific to that to Pic.

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- x. Aquatic and benthic organisms. Information must include an assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.
 - ~~xi. A vegetation habitat survey must be conducted. The WDFW must be contacted prior to the survey to ensure it is conducted according to the most current WDFW eelgrass/macroalgae survey guidelines.~~
 - ~~xii. Assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.~~
- Further baseline studies including surveys and sampling may be required depending upon the adequacy of available information, existing conditions, and the nature of the proposal.
- c. A detailed description of the project proposal including:
 - i. Species to be reared.
 - ii. Substrate modification or vegetation removal.
 - iii. Planting, harvest and processing location, method and timing, including work proposal and construction techniques proposed (list all hand tools, machinery used (such as track hoes, trucks or barges), type of work, frequency, and duration.
 - d. Anticipated use of any feed, pesticides, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals, and an assessment of predicted impacts. Approvals for the use of ~~No~~ such materials shall be ~~used until approval is~~ obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, and the Washington State Departments of Ecology, Fish and Wildlife, and Agriculture, as required, and ~~proof thereof is~~ submitted to the County. ~~Compounds with the least persistence shall be used.~~ An annual report of antibiotic use shall be submitted to the Whatcom County Department of Health, Environmental Health division. The report shall indicate the type and amount of antibiotics used during the previous calendar year. Actual usage data for all chemicals and antibiotics shall be maintained for review by County inspectors at all times.
 - e. Number of employees/workers necessary for the project, including average and peak employment.
 - f. Methods of waste disposal and predator control.
 - g. Methods to address pollutant loading, including biological oxygen demand (BOD).
 - h. Assessment of potential impacts on shoreline ecological functions and processes addressing the baseline conditions identified, including but not limited to indirect and cumulative effects.
 - i. A visual impact analysis ~~F~~for floating culture facilities or other structures, if required by the County ~~may require a visual impact analysis.~~ (See the Department of Ecology's "Aquaculture Siting Study" 1986 for general approach.) Depending on the size and complexity of the proposal, such analysis may be prepared by the applicant/proponent, without professional assistance; provided, that it includes an adequate assessment of impacts.

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- j. Information demonstrating that the site has natural potential for the type(s) of aquaculture proposed, due to necessary substrate or other conditions, as well as water quality suitable for the type(s) of aquaculture proposed.
 - k. Information demonstrating that the proposed aquaculture activities will not result in a net loss of shoreline ecological functions or processes or adversely affect habitat conservation areas ~~as defined by~~ (see WCC Chapter 16.16 (Critical Areas)).
 - l. Information demonstrating that the proposed aquaculture activities will not substantially and materially conflict with areas devoted to established uses of the aquatic environment. Such uses include but are not limited to navigation, moorage, sport or commercial fishing, log rafting, underwater utilities, and scientific research. Existing public opportunities for gathering wild stock aquatic resources on public lands shall be addressed in any application for aquaculture on public tidelands or bedlands. Compensation for loss of public access to public aquatic resources may be required.
 - m. Other pertinent information deemed necessary by the ~~administrator~~ Director.
2. Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.
- a. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.
 - b. Aquaculture activities shall ~~be restricted to reasonable hours and/or days of operation when necessary to~~ minimize ~~substantial~~ adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses, or critical habitat.
 - c. Aquaculture facilities shall not ~~significantly impact~~ ~~introduce incompatible visual elements or substantially degrade~~ the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.

G. Supplemental Application Requirements – Commercial Geoduck Aquaculture.

1. In addition to the general application requirements of WCC Title 22 (Land Use and Development), subsection F, above, and chapter 173-27 WAC, applications for new geoduck aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:
 - a. A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.
 - b. A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above, and
 - c. Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

Comment [CES124]: Amended based on public comment (TSF07)

Comment [AP125]: Updated per Periodic Review Checklist, Item 2011.b, and Scoping Document, Item #1f.

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H. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Resort, Shoreline Residential, and Rural shoreline environment, proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.

1-2. In the Natural shoreline environment, aquaculture activities that do not require structures, facilities, or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted.

C. Shoreline Area Regulations:

A. Urban. Aquaculture activities are permitted subject to policies and regulations of this program.

B. Urban Resort. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.

C. Urban Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.

D. Shoreline Residential. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.

E. Rural. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis.

F. Resource. Aquaculture activities are permitted subject to policies and regulations of this program.

G. Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.

H. Natural. Aquaculture activities that do not require structures, facilities or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted subject to policies and regulations of this program.

Comment [AP126]: Reorganized and revised for clarity.

Comment [CES127]: The below are addressed in the use table or above now.

23.410.050060 Boating Facilities – Marinas and Launch Ramps.

A. Policies.

A. Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps

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- are limited and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.
- ~~B. 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.~~
- ~~C. 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.~~
- ~~D. Boating facilities should provide physical and visual public shoreline access and provide for multiple use, including water related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.~~
- ~~E. 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.~~
- ~~F. New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sand lance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.~~
- ~~G. Boating facilities should be located and designed to avoid adverse effects upon coastal, riverine, and nearshore processes such as erosion, littoral or riparian transport, and accretion, and should, where feasible, enhance degraded, scarce, and/or valuable shore features including accretion shoreforms.~~
- ~~H. Launch ramps are preferred over marinas on accretion shores because associated impacts are often reversible and such structures will not normally interfere with littoral drift and accretion unless offshore defense structures or dredging are also required.~~
- ~~I. Nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged during the design, development and operation of boating facilities. Nonregulatory methods may include public facility and resource planning, education, voluntary protection and enhancement projects, or incentive programs.~~
- ~~J. Boating facilities should be located, designed and operated so that other appropriate water-dependent uses are not adversely affected.~~

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- ~~K. Location and design of boating facilities should not unduly obstruct navigable waters and should avoid adverse effects to recreational opportunities such as fishing, shellfish gathering, pleasure boating, commercial aquaculture, swimming, beach walking, picnicking and shoreline viewing.~~
- ~~L. Boating facilities should be located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.~~

~~Regulations.~~

A. Marinas and Launch Ramps – General.

1. Boating facilities, including marinas and launch ramp development, in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. ~~This section applies to marinas and public boat launches, though the moorage structures of such facilities shall also comply with WCC 23.40.150 (Moorage Structures). For Docks moorage structures serving four or fewer single-family residences users, only are subject to the policies and regulations of WCC 23.40.150 100.090; (Moorage Moorage Structures) applies – Docks, piers, and mooring buoys.~~
2. Accessory uses shall be limited to those ~~that~~ are water-dependent, related to boating, and necessary for ~~facility~~ operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.
3. All developments shall provide boater education addressing boater impacts on water quality and other shoreline resources, boater safety, and requirements for boater use of sewage pump-outs.

B. Marinas – Location Standards.

1. When marina sites are considered, sufficient evidence must be presented to show there is a regional demand and existing marinas are inadequate and cannot be expanded to meet regional demand.
2. Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds or commercial aquaculture operations. The specific distance shall be determined in conjunction with the Washington State Department of Health, the Washington State Department of Ecology, and other agencies with expertise. Criteria for determining the specific distance may include:
 - a. The size and depth of the waterbody;
 - b. Tidal flushing action in the project area;
 - c. Size of the marina and projected intensity of use;
 - d. Whether fuel will be handled or stored;
 - e. Location of a sewer hook-up; and
 - f. Expected or planned changes in adjacent land uses that could result in additional water quality impacts or sanitary treatment requirements.
3. Marinas shall be allowed only on stable shoreline areas where water depth is adequate to eliminate or minimize the need for channel dredging (for construction or maintenance), soil disposal, filling, beach enhancement, and other harbor and channel maintenance activities.

Comment [CES128]: Moved from below

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4. Marinas shall be located only in areas where there is adequate water mixing and flushing and shall be designed so as not to reduce or negatively influence flushing characteristics.
5. Fixed breakwaters are discouraged.
6. Marinas shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to ensure the safety of swimmers.
7. Marinas shall not be located at or along:
 - a. Significant littoral drift cells, including resource material areas, such as feeder bluffs and accretion beaches, barrier beaches, points, sand spits and hooks; or
 - b. Wetlands, marshes, bogs, swamps and lagoons; or
 - c. Mud flats and salt marshes; or
 - d. Fish and shellfish spawning and rearing areas.
8. Solid structures shall not be permitted to extend without openings from the shore to zero tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow fringe water for fish passage.

C. Marinas – Site Design.

Comment [CES129]: Moved from below

1. Proposals for marinas shall include public launch facilities unless the applicant can demonstrate that providing such facilities is not feasible.
2. Marinas shall be designed, constructed, and maintained to:
 - a. Provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water;
 - b. Minimize interference with geo-hydraulic processes and disruption of existing shore forms;
 - c. Be aesthetically compatible with existing shoreline features and uses;
 - d. Avoid adverse proximity impacts such as noise, light, and glare;
 - e. Include vegetative screening for parking, and upland storage areas and facilities consistent with landscaping standards prescribed in WCC 20.80.300, et seq. (Landscaping); and,
 - f. Include public restrooms, accessory parking, or other recreational uses according to the scale of the facility.
3. Short-term loading/unloading areas and hand-launch storage areas may be located at ramps or near berthing areas and should be constructed of pervious material.
4. Public access, both visual and physical, such as viewpoints or walkways, shall be an integral part of all marina design and development commensurate with the particular proposal and must meet the standards of WCC 23.30.0760 (Public Access).
5. Innovative construction techniques and construction methods of foreshore marinas may be allowed when demonstrated to the satisfaction of the Director that the design will prevent degradation of fish migration, critical saltwater habitat, and/or shellfish resources.

D. Operations and Management.

Comment [CES130]: Moved from below

1. The discharge of sewage and/or toxic material from boats and/or shore installations is prohibited. The responsibility for the adequate and approved collection and disposal of marina-originated sewage, solid waste, and petroleum waste is that of the marina operator. An emergency spill kit and use instructions shall be provided for tenants in an easy-to-access area and be accessible twenty-four (24) hours a day.

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2. Commercial fish or shellfish processing and the discharge or discarding of unused bait, scrapfish, or viscera shall be prohibited.
 3. Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated, protected, and posted.
 4. If dredging at marina entrances changes the littoral drift processes and adversely affects adjacent shores, the marina operator shall be required to periodically replenish these shores with the appropriate quantity and quality of aggregate as determined by a geohydraulic study, paid for by the operator or owner and completed to the satisfaction of the Director.
 5. Temporary vacant moorage spaces shall be made available for "transient moorage" (less than two-week stay) when at least one of the following applies:
 - a. The marina is owned, operated, or franchised by a governmental agency for use by the public;
 - b. The marina provides more than three thousand (3,000) lineal feet of moorage; or
 - c. The marina is part of a mixed-use development which includes restaurants or other water-enjoyment uses.
 6. Marina operators shall execute a lease, contract, or deed that establishes permission to use a slip for a stated period of time and that establishes conditions for use of the slip, including the requirement that all boats meet applicable sanitation regulations.
 7. Marinas shall meet the following before occupancy:
 - a. Marinas that dispense fuel shall have adequate facilities and post procedures for fuel handling and storage to prevent/minimize accidental spillage.
 - b. Marinas shall have facilities, equipment, such as emergency spill kits, and post procedures for containment, recovery, and mitigation of spilled petroleum, sewage, and toxic products.
 - c. Marina operators shall post signs where they are readily visible to all marina users describing regulations:
 - i. Pertaining to handling and disposal of waste, wastewater, toxic materials, and recycling;
 - ii. Prohibiting the discharge of marine toilets (i.e., no untreated sewage discharge);
 - iii. Prohibiting the disposal of fish and shellfish cleaning wastes; and
 - iv. Describing best management practices (BMPs) for boat maintenance and repairs on site.
 - d. Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site.
 - e. Marina docks shall be equipped with adequate lifesaving equipment, such as:
 - i. Life rings, hooks, ropes and ladders, or equivalent, on the end of fingers; and/or
 - ii. One ladder (per side) either every one hundred (100) linear feet of the dock, or every six (6) slips whichever is greater. This regulation does not apply to a float which is less than one hundred (100) feet from a shoreline; or
 - iii. At least one ladder to serve a float with six (6) or more slips and is one hundred (100) linear feet in length or less.
- E. Additional Standards for Boat Launches.
1. Boat launches are prohibited in:

Comment [CES131]: Moved from below

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- a. Significant littoral drift cells, including resource material areas such as feeder bluffs and accretion beaches, points, spits and hooks;
- b. Wetlands, marshes, bogs, swamps, and lagoons;
- c. Mud flats and salt marshes; and
- d. Fish spawning and rearing areas and commercial or recreational shellfish areas.
2. Launch ramps shall be:
 - a. Located on stable shorelines where water depths are adequate to eliminate or minimize the need for:
 - i. Offshore or foreshore channel construction dredging; or
 - ii. Maintenance dredging; or
 - iii. Spoil disposal; or
 - iv. Filling; or
 - v. Beach enhancement; or
 - vi. Other harbor and channel maintenance activities.
 - b. Located in areas where there is adequate water mixing and flushing.
 - c. Designed so as not to negatively influence flushing characteristics.
3. Innovative or hinged boat launches may be permitted on marine accretion shoreforms, provided that continual grading is not required. When grading is permitted it must not adversely affect ecological functions and ecosystem-wide processes. Accessory facilities shall be located out of critical areas.
4. Boat launches may be allowed on stable banks where current deflectors or other stabilization structures will not be necessary.
5. Boat launches shall not be permitted where the upland within twenty-five (25) feet of the OHWM has a slope that exceeds twenty-five percent (25%) grade and/or where substantial cutting, grading, filing, or defense works is necessary.
6. Boat launches, minor accessory buildings, and haul-out facilities shall be designed to be in character and scale with the surrounding shoreline.
7. Boat launches shall be built from flexible, hinge-segmented pads that can adapt to changes in beach profiles, unless a solid structure is demonstrated to be more appropriate for the intended level of use.
8. Boat launches shall be placed and kept near flush with the foreshore slope to minimize the interruption of geo-hydraulic processes and impacts to critical saltwater habitats.
9. Marine rails for boat launching shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
10. Boat launch facilities shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to ensure the safety of swimmers.
- F. Additional Standards for Live-Aboard Vessels.
 1. Live-aboard vessels are only allowed in marinas and only as follows:
 - a. Vessels must be for residential use only;
 - b. Slips occupied by live-aboard vessels shall not exceed 10 percent of the total slips in the marina;

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~~c. Vessels shall be owner-occupied, and~~
~~d. Vessels must be operational for cruising.~~

2. Live-aboard vessels must comply with all marine regulations, policies, and procedures of the U.S. Coast Guard, and any other federal and state government agencies that pertain to health, safety and/or environmental protection. Proof of seaworthiness of the vessel and the adequacy of the mooring arrangement must be provided and laws governing all the citizens of Whatcom County must be obeyed.

A.G. Additional Standards for Boat Storage.

1. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:
 - a. No suitable upland locations exist for such facilities; or
 - b. It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or
 - c. It can be demonstrated that wet moorage would enhance public use of the shoreline.
2. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.

B.H. Additional Standards for Parking and Vehicle Access.

1. Parking facilities shall meet County zoning design and location standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.
2. ~~Public or quasi-public~~ launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.
3. Parking ~~that does not require a shoreline location in order to carry out its functions~~ shall:
 - a. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
 - b. Be planted or landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas; and

~~c. Observe critical area buffers in Chapter 16.16 WCC, and~~

~~d. Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, to the extent feasible pursuant to WCC 20.80.630, et seq. (Stormwater and drainage).~~

C.I. Supplemental Application Requirements. In addition to the general application requirements of WCC Title 22 (Land Use and Development), applications for marinas or launch ramps shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:

1. ~~Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the~~

Comment [AP132]: Added per Scoping Document, Item #17.

From WAC 332-30-171:

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

- (i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and
- (ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

The County can opt to set a different limit, though 10 percent is in line with DNR regulations.

Per the Port of Bellingham Harbor Rules, Regulations, and Rates Handbook – 2019, at Squalicum Harbor there are currently 100 designated Live-aboard licenses and 50 Live-aboard licenses at Blaine Harbor. However, it is unclear what percentage of slips these numbers represent. May want to confirm that a proposed regulation here will not conflict with the Port's current regulations.

Blaine Harbor – 629 slips total (~8% live-aboard)
 Squalicum Harbor – 1,400+ slips total (~7% live-aboard)

As such, the proposed provision should not conflict with the Port's regulations.

Comment [AP133]: Removed since there's already have a section that says the CAO applies in the shoreline jurisdiction.

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- 1 ~~use. Applications shall b~~ provide accompanied by supporting application materials a level of
- 2 ~~service needs analysis~~ that documents the market demand for such facilities, including:
- 3 a. The total amount of moorage proposed;
- 4 b. The proposed supply, as compared to the existing supply within the service range of the
- 5 proposed facility, including vacancies or waiting lists at existing facilities;
- 6 c. The expected service population and boat ownership characteristics of the population;
- 7 d. Existing approved facilities or pending applications within the service area of the proposed
- 8 new facility.
- 9 ~~2. New marinas with in-water moorage and expansion of in-water moorage facilities in existing~~
- 10 ~~marinas shall be approved only when:~~
- 11 ~~3. Opportunities for upland storage sufficient to meet the demand for moorage are not available~~
- 12 ~~on-site; and~~
- 13 ~~4. Expansion of upland storage at other existing marinas is not feasible.~~
- 14 ~~5.2. Applications shall d~~ document that a preferred method of providing moorage facilities is not
- 15 feasible. Review of proposals involving public aquatic lands may be required to include an
- 16 analysis of other alternative sites not controlled by the applicant/proponent.
- 17 ~~6.3. Applications for launch ramps shall Provide a critical area assessment report pursuant to WCC~~
- 18 ~~16.16 (Critical Areas), including contain:~~
- 19 ~~7. A habitat survey.~~
- 20 ~~8.4. A slope bathymetry map.~~
- 21 ~~9.5. Evaluation of effects on littoral drift.~~
- 22 ~~10.6. Applications for marinas, launch ramps, and accessory uses shall include Provide a an~~
- 23 assessment of existing water-dependent uses in the vicinity including, but not limited to,
- 24 navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking, and
- 25 shoreline viewing, and shall document potential impacts and mitigating measures. Impacts on
- 26 these resources shall be considered in review of proposals and specific conditions to avoid or
- 27 minimize impacts may be imposed.
- 28 ~~11.7. A Marina and launch ramp proposals may be required to prepare a Provide a visual~~
- 29 assessment of views from surrounding residential properties, public viewpoints, and the view of
- 30 the shore from the water surface, if required.
- 31 ~~D. Tabular Regulations—Setbacks, Height and Open Space for Marinas and Launch Ramp Development.~~
- 32 ~~Minimum required setbacks from shorelines and side property lines, maximum height limits, and~~
- 33 ~~open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers,~~
- 34 ~~setbacks, height, open space, and impervious surface coverage.~~
- 35 ~~J. Regulations for Specific Shoreline Environment Designations.~~
- 36 ~~1. In the Natural shoreline area environment, mMarinas or launch ramps are prohibited; except~~
- 37 ~~that primitive ramps to facilitate hand launching of small craft are permitted if materials and~~
- 38 ~~design are compatible with the site.~~
- 39 ~~2. In the Aquatic shoreline area environment, covered over-water structures may be permitted~~
- 40 ~~only where vessel construction or repair work is to be the primary activity and covered work~~
- 41 ~~areas are demonstrated to be the minimum necessary over water.~~

Comment [CES134]: Moved, as this is an approval criterion, not an application requirement.

Comment [DN135]: Moved to application requirements

Comment [AP136]: Carried over from removed 'Shoreline Area Regulations.'

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2. Site Design and Operation.

- a. ~~Marinas or launch ramps shall not be permitted on the following marine shores unless it can be demonstrated that interference with littoral drift and/or degradation or loss of shoreline ecological functions and processes, especially those vital to maintenance of nearshore habitat, will not occur. Such areas include:~~
 - b. ~~Feeder bluffs exceptional;~~
 - c. ~~High energy input driftways;~~
 - d. ~~Marinas or launch ramps shall not be permitted within the following marine shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:~~
 - e. ~~Marshes, estuaries and other wetlands;~~
 - f. ~~Tidal pools on rock shores;~~
 - g. ~~Kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sand lance);~~
 - h. ~~Subsistence, commercial and recreational shellfish beds; and~~
 - i. ~~Other critical saltwater habitats.~~
 - j. ~~Marinas or launch ramps shall not be permitted on the following marine accretion shoreforms unless it can be demonstrated that no other alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program. Hoists are preferred over dredged marinas or launch ramps at such locations:~~
 - k. ~~Open points;~~
 - l. ~~Spits and hooks;~~
 - m. ~~Tomboles;~~
 - n. ~~Open bay barrier beaches;~~
 - o. ~~Accretional pocket beaches.~~
- b. ~~Foreshore marinas or launch ramps may be permitted on low erosion rate marine feeder bluffs or on low energy input erosional driftways if the proposal is otherwise consistent with this program. Foreshore marinas or launch ramps are prohibited on accretional lake shores because these natural features are uncommon on lakes and are highly valuable for recreation.~~
- c. ~~Backshore marinas and launch ramps may be permitted on closed accretional points, closed accretional bluff and bay barrier beaches, or low energy input driftways, except where wetlands are present or it can be demonstrated that a foreshore location would result in fewer impacts to shoreline ecological functions and processes, natural features and uses.~~
- d. ~~Marinas or launch ramps may be permitted on low bank lake shores where backshore wetlands are protected, or where wetlands are not present, if most of the beach and backshore are preserved in a natural condition for public or quasi-public recreation.~~
- e. ~~Marinas shall not be permitted in low gradient, broad meander stream channel reaches, except where located on outer, concave bends or straight, moderately eroding or stable banks, so that dredging and/or shore protection will not be necessary.~~

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- 1 ~~f. Marina basins or structures shall not be permitted on river point bars or other accretional~~
- 2 ~~beaches. A limited number of launch ramps may be permitted on accretion shoreforms;~~
- 3 ~~provided, that any necessary grading will not adversely affect shoreline ecological functions or~~
- 4 ~~fluvial processes, and any accessory facilities are located out of the floodway.~~
- 5 ~~g. Marinas shall not be permitted in areas of active channel migration, where channel dredging will~~
- 6 ~~be required, if a flood hazard will be created, or if valuable shoreline ecological functions and~~
- 7 ~~processes will be degraded.~~
- 8 ~~h. Launch ramps may be located immediately downstream of accretion shoreforms, or on other~~
- 9 ~~non-erosional banks, where no or a minimum number of current deflectors will be necessary.~~
- 10 ~~i. Floating piers shall be required in rivers and streams unless it can be demonstrated that fixed~~
- 11 ~~piers will result in substantially less impact on geohydraulic processes and flood hazards can be~~
- 12 ~~minimized or mitigated.~~
- 13 ~~j. Where foreshore marinas are permitted:~~
- 14 ~~i. Open pile or floating breakwater designs shall be used unless it can be demonstrated that~~
- 15 ~~riprap or other solid construction would not result in any greater net impacts to shoreline~~
- 16 ~~ecological functions or processes or shore features.~~
- 17 ~~ii. Solid structures shall not be permitted to extend without openings from the shore to zero~~
- 18 ~~tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow~~
- 19 ~~fringe water for fish passage.~~
- 20 ~~k. Foreshore and backshore marinas shall be designed to allow the maximum possible circulation~~
- 21 ~~and flushing of all enclosed water areas.~~
- 22 ~~— New or expanding marinas with dredged entrances that adversely affect littoral drift to the~~
- 23 ~~detriment of other shores and their users shall be required to periodically replenish such shores~~
- 24 ~~with the requisite quantity and quality of aggregate as determined by professional coastal~~
- 25 ~~geologic engineering studies.~~
- 26 ~~l. All facilities shall be located and designed to avoid impediments to navigation and to avoid~~
- 27 ~~depriving other properties of reasonable access to navigable waters. Review and approval by~~
- 28 ~~the U.S. Coast Guard may be required as a condition of issuance of building or development~~
- 29 ~~permits to assure compliance. All in-water structures shall be marked and lighted in compliance~~
- 30 ~~with U.S. Coast Guard regulations.~~
- 31 ~~m. Design and other standards for physical improvement of docks and piers are found in~~
- 32 ~~WCC 23.100.090, Moorage — Docks, piers and mooring buoys.~~
- 33 ~~E. Public Access.~~
- 34 ~~— New launch ramps shall be approved only if they provide public access to public waters, which~~
- 35 ~~are not adequately served by existing access facilities, or if use of existing facilities is~~
- 36 ~~documented to exceed the designed capacity. Prior to providing ramps at a new location,~~
- 37 ~~documentation shall be provided demonstrating that expansion of existing launch facilities~~
- 38 ~~would not be adequate to meet demand.~~
- 39 ~~a. Public access areas shall provide space and facilities for physical and/or visual access to water~~
- 40 ~~bodies, including feasible types of public shore recreation.~~

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b. ~~Marinas and boat launches shall provide public access for as many water-dependent recreational uses as possible, commensurate with the scale of the proposal. Features for such access could include, but are not limited to, docks and piers, pedestrian bridges to offshore structures, fishing platforms, artificial pocket beaches, and underwater diving and viewing platforms.~~

~~3. Site Considerations:~~

a. ~~Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.~~

b. ~~Public launch ramps and/or marina entrances shall not be located near beaches commonly used for swimming, valuable fishing and shellfish harvest areas, or sea lanes used for commercial navigation unless no alternative location exists, and mitigation is provided to minimize impacts to such areas and protect the public health, safety and welfare.~~

c. ~~Marinas and accessory uses shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.~~

d. ~~Marinas, launch ramps, and accessory uses shall be located where water depths are adequate to avoid the need for dredging and minimize potential loss of shoreline ecological functions or processes.~~

e. ~~Marinas, launch ramps, and accessory uses shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods, abnormally high tides, and/or destructive storms.~~

~~4. Boat Storage:~~

~~3. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:~~

~~i. No suitable upland locations exist for such facilities; or~~

~~ii. It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or~~

~~iii. It can be demonstrated that wet moorage would enhance public use of the shoreline.~~

~~4. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.~~

~~New covered moorage for boat storage is prohibited.~~

~~5. Covered over-water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.~~

~~5. Waste Disposal:~~

~~1. Marinas shall provide pump out, holding, and/or treatment facilities for sewage contained on boats or vessels.~~

~~2. Discharge of solid waste or sewage into a water body is prohibited. Marinas and boat launch ramps shall provide adequate restroom and sewage disposal facilities in compliance with applicable health regulations.~~

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3. Garbage or litter receptacles shall be provided and maintained by the operator at several locations convenient to users.
4. Disposal or discarding of fish or shellfish cleaning wastes, scrap fish, viscera, or unused bait into water or in other than designated garbage receptacles is prohibited.
5. Marina operators shall post all regulations pertaining to handling, disposal, and reporting of waste, sewage, fuel, oil, or toxic materials where all users may easily read them.
1. Oil Product Handling, Spills, and Wastes. Fail-safe facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan for oil and other products, shall be required of new marinas and expansion or substantial alteration of existing marinas. Compliance with federal or state law may fulfill this requirement. Handling of fuels, chemicals or other toxic materials must be in compliance with all applicable federal and state water quality laws as well as health, safety and engineering requirements. Rules for spill prevention and response, including reporting requirements, shall be posted on-site.
6. Parking and Vehicle Access.
 1. Parking facilities shall meet County zoning standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.
 2. Public or quasi-public launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.
 3. Parking that does not require a shoreline location in order to carry out its functions shall:
 - e. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
 - f. Be planted or landscaped preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas;
 - g. Observe critical area buffers in Chapter 16.16 WCC; and
 - h. Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, to the extent feasible.
 - a. Connecting roads between marinas and public streets shall have all weather surfacing, and be satisfactory to the County Engineer in terms of width, safety, alignment, sight distance, grade and intersection controls.
7. Launch Ramp Design.
 - a. Preferred ramp designs, in order of priority, are:
 - i. Open grid designs with minimum coverage of beach substrate.
 - ii. Seasonal ramps that can be removed and stored upland.
 - iii. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in beach profile.
 - b. Ramps shall be placed and maintained near flush with the foreshore slope.
8. Accessory Uses.
 - a. Accessory uses at marinas or launch ramps shall be limited to those water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.

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Accessory development includes, but is not limited to, parking, open air storage, waste storage and treatment, stormwater management facilities, utility, and upland transportation development.

b. Water-oriented accessory uses reasonably related to marina operation may be located over water or at the water's edge by conditional use if an over-water or water's edge location is essential to the operation of the use or if opportunities are provided for public access for a substantial number of persons.

a. Application Requirements:

12. Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the use. Applications shall be accompanied by supporting application materials that documents the market demand for such facilities, including:

- i. The total amount of moorage proposed;
- ii. The proposed supply, as compared to the existing supply within the service range of the proposed facility, including vacancies or waiting lists at existing facilities;
- iii. The expected service population and boat ownership characteristics of the population;
- iv. Existing approved facilities or pending applications within the service area of the proposed new facility.

13. New marinas with in-water moorage and expansion of in-water moorage facilities in existing marinas shall be approved only when:

14. Opportunities for upland storage sufficient to meet the demand for moorage are not available on site; and

15. Expansion of upland storage at other existing marinas is not feasible.

16. Applications shall document that a preferred method of providing moorage facilities is not feasible. Review of proposals involving public aquatic lands may be required to include an analysis of other alternative sites not controlled by the applicant/proponent.

17. Applications for launch ramps shall contain:

- (A) A habitat survey.
- (B) A slope bathymetry map.
- (C) Evaluation of effects on littoral drift.

18. Applications for marinas, launch ramps, and accessory uses shall include an assessment of existing water-dependent uses in the vicinity including, but not limited to, navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking and shoreline viewing and document potential impacts and mitigating measures. Impacts on these resources shall be considered in review of proposals and specific conditions to avoid or minimize impacts may be imposed.

19. Marina and launch ramp proposals may be required to prepare a visual assessment of views from surrounding residential properties, public viewpoints and the view of the shore from the water surface.

9. Tabular Regulations – Setbacks, Height and Open Space for Marinas and Launch Ramp Development. Minimum required setbacks from shorelines and side property lines, maximum height limits, and

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~~open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space, and impervious surface coverage.~~

Comment [CES137]: Moved above and reorganized.

~~C. Shoreline Area Regulations.~~

~~1. Urban. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~2. Urban Resort. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~3. Urban Conservancy. Launch ramps are permitted subject to policies and regulations of this program. Marinas may be permitted as a conditional use.~~

~~4. Shoreline Residential. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~5. Rural. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~6. Resource. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~

~~7. Conservancy. Launch ramps are permitted subject to policies and regulations of this program. Marinas may be permitted as a conditional use.~~

~~8. Natural. Marinas or launch ramps are prohibited, except that primitive ramps to facilitate hand launching of small craft are permitted if materials and design are compatible with the site.~~

~~9. Aquatic.~~

~~a. Marinas and launch ramps are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

~~23.100.060 23.40.070 Commercial Uses.~~

~~Commercial development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~A. In securing shoreline locations for commercial use, preference should be given first to water-dependent commercial uses, then to water-related and water-enjoyment commercial uses.~~

~~B. Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.~~

~~C. Commercial development should ensure visual compatibility with adjacent noncommercial properties.~~

~~D. Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.~~

~~B. Regulations.~~

~~General.~~

~~A. Allowed Use. Commercial uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of WCC 23.90.030 and the specific criteria below. Prior to approval of an application, the Director shall review a proposal for design,~~

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layout, and operation of the use and ~~determine whether the proposed use is water-dependent, water-related, water-enjoyment, or a non-water-oriented commercial use.~~

1. Water-dependent commercial uses shall be given first preference over ~~non-water dependent water-related and water-enjoyment~~ commercial uses. ~~Prior to approval of water-dependent uses, the administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-dependent use.~~

Comment [CES138]: Amended to be consistent w/ WAC 173-26-241(3)(d)

2. Water-related commercial uses ~~may shall~~ not be approved if they displace existing water-dependent uses. ~~Prior to approval of a water-related commercial use, the administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-related use.~~

3. Water-enjoyment commercial uses ~~may shall~~ be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. ~~Prior to approval of water-enjoyment uses, the administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-enjoyment use.~~

4. ~~Non-water-oriented commercial uses may be permitted as a conditional use where located on a site physically separated from the shoreline by another property in separate ownership or a public right of way such that access for water-oriented use is precluded; provided, that such conditions were lawfully established prior to the effective date of this program. All other non-water-oriented commercial uses are prohibited in the shoreline unless the use provides significant public benefit with respect to the objectives of the Act and ~~is the proposed use:~~~~

a. ~~Is P~~part of a mixed use project that includes a water-oriented use; or

b. ~~Is~~ on a site where navigability is severely limited; ~~or,~~

c. ~~Does not occupy space designated for water-dependent or water-related use identified in a project permit approval; or,~~

b-d. ~~In areas designated for commercial use and the site is physically separated from the shoreline by another property or public right of way.~~

Comment [AP139]: Language revised for greater clarity and consistency with the use table.

Comment [CES140]: Added to be consistent w/ WAC 173-26-241(3)(d)

5. ~~When permitted, non-w~~Water-oriented commercial uses shall provide public access in accordance with the provisions of WCC 23.30.060 (Public Access).

5-6. ~~Non-water oriented commercial uses shall provide public access~~ and/or restoration as follows:

a. ~~Non-water-oriented commercial uses shall provide p~~Public access ~~shall be~~ in the form of unrestricted open space. ~~The administrator shall determine the amount of access in accordance with the provisions of WCC 23.90.080 on a case-by-case basis.~~

b. If no water-oriented commercial uses are located on or adjacent to the water as part of a mixed use development, 80% of the shoreline and associated buffers shall be preserved or restored to provide shoreline ecological functions that approximate the functions provided by the site in natural conditions.

c. The requirements ~~in subsections (B)(1)(e)(i) and (iii)~~ of this section may be modified when:

i. The site is designated as a public access area by a shoreline public access plan, in which case public access consistent with that plan element shall be provided; or

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ii. Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided ~~consistent with the policies and regulations of this program.~~

d. Where restoration is proposed, buffers shall be designed as appropriate to protect shoreline resources based on a ~~site-specific restoration plan assessment and may differ from the standard critical area buffer dimensions provided in Chapter 16.16WCC; provided, that the building envelope for the proposed non-water-oriented use shall be based on current site conditions.~~

~~i. The requirements of this subsection (B)(1)(e) shall not apply to those non-water-oriented commercial uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.~~

~~6-7.~~ If water-oriented commercial uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved in a substantially undeveloped condition until such time that an appropriate water-dependent use has been identified for the area. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.

B. Site Design and Operation.

1. Commercial recreation-oriented uses, including commercial resorts and ~~rental~~ campgrounds, shall provide adequate access to water areas for their patrons or shall provide adequate on-site outdoor recreation facilities so that such resorts or campgrounds will neither be dependent on nor place undue burdens upon public access and recreational facilities.

2. ~~New and expanded c~~Commercial development shall install or establish access roads of sufficient capacity and with appropriate improvements to provide vehicular and pedestrian access to the site. Utilities shall be adequate to serve the demands of the proposed uses.

3. Over-Water Structures.

a. Only those portions of water-dependent commercial uses that require over-water facilities such as boat fuel stations shall be permitted to locate waterward of the OHWM, provided they are located on floats, piling, or other open-work structures.

b. Non-water-dependent commercial uses shall not be allowed over water except in limited instances where they are appurtenant to existing structures and necessary in support of water-dependent uses.

~~4. Marine rails shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.~~

~~4. Building Height.~~

~~a. As mandated by the Act (RCW 90.58.320), no permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~

Comment [PDS141]: Already covered by 23.40.020(E)(1).

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- b. ~~Lodging developments over 35 feet in height may be allowed in resort communities within the Urban Resort shoreline area designation, subject to the requirements of WCC 23.90.130(5). However, due to the potential for adverse impact upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:~~
- i. ~~Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.~~
 - ii. ~~Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.~~
 - iii. ~~Recreational needs of building clientele must be provided for through several on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases.~~

Comment [PDS142]: Moved to 23.40.020(E)(1).

C. ~~Tabular Regulations – Setbacks, Height and Open Space for Commercial Development. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.~~

C. Regulations for Specific Shoreline Environment Designations.

1. In the Conservancy and Urban Conservancy shoreline environments, only low intensity commercial use and development—either water-oriented or non-water-oriented, and limited to resort, campground, and similar facilities—may be permitted as a shoreline conditional use. Non-water-oriented uses are subject to the criteria for such uses of this section.
2. In the Urban Resort shoreline environment water-oriented resort-oriented commercial use and developments are permitted. Non-water-oriented commercial uses and developments may be permitted as a shoreline conditional use subject to the criteria for such uses in this section. Commercial uses in this shoreline environment are permitted either by themselves or as part of a structure or development also containing residential uses.
3. In the Resource shoreline environment, water-oriented commercial use and development related to natural resource products predominantly produced on site is permitted. Non-water-oriented commercial related to natural resource products predominantly produced on site may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.

1. ~~Shoreline Area Regulations.~~

~~Urban. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

Comment [CES143]: Addressed in use table now.

~~Urban Resort. Water-oriented resort-oriented commercial use and development is permitted subject to policies and regulations of this program. Non water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section. Commercial~~

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uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this program.

~~Urban Conservancy. Low intensity water-oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non-water-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Shoreline Residential. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Rural. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Resource. Water-oriented commercial use and development related to natural resource products predominantly produced on site is permitted subject to policies and regulations of this program. Non-water-oriented commercial related to natural resource products predominantly produced on site may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Conservancy. Low intensity water-oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non-water-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Natural. Commercial use and development is prohibited.~~

~~—Aquatic. Commercial use and development is prohibited, except that water-dependent uses and appurtenant structures may be permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

23.1100.070-080 Dredging and Dredge Material Disposal.

A.—Policies.

- ~~1. Dredging should be permitted for water-dependent uses of economic importance to the region and/or essential public facilities only when necessary and when alternatives are infeasible or less consistent with this program.~~
- ~~2. Dredging to provide water-oriented recreation should not be permitted.~~
- ~~3. Minor dredging as part of ecological restoration or enhancement, beach nourishment, public access or public recreation should be permitted if consistent with this program.~~

Comment [AP144]: This section has been moved from the General Regulations section (previously WCC 23.90.120). Added to title for clarity of section contents and consistency with WAC 173-26-231.

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- ~~4. New development should be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.~~
- ~~5. Dredging of bottom materials for the primary purpose of obtaining material for landfill, construction, or beach nourishment should not be permitted.~~
- ~~6. Spoil disposal on land away from the shoreline is generally preferred over open water disposal.~~
- ~~7. Long-term cooperative management programs that rely primarily on natural processes, and involve land owners and applicable local, state and federal agencies and tribes, should be pursued to prevent or minimize conditions which make dredging necessary.~~

~~B. Regulations.~~

A. General.

~~8.1.~~ Dredging shall only be permitted for the following activities:

- a. Development of approved ~~wet moorages, harbors, ports and~~ water-dependent uses of economic importance to the region and/or essential public facilities industries of economic importance to the region only when there are no feasible alternatives.
- ~~b. Development of essential public facilities when there are no feasible alternatives.~~
- ~~e.b.~~ Maintenance dredging for the purpose of restoring a lawfully established development or the previously permitted or authorized hydraulic capacity of streams.
- ~~d.c.~~ Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
- ~~e.d.~~ Establishing, expanding, relocating, or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
- ~~f.e.~~ Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological functions and processes, and is part of a comprehensive flood management solution.
- ~~g.f.~~ Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
- ~~h.g.~~ Minor in-water trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:
 - i. Impacts to fish and wildlife habitat are avoided to the maximum extent possible.
 - ii. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
 - iii. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.
- h. Dredging for the purpose of obtaining ~~landfill~~ material is prohibited, except that:
 - i. Limited bar scalping of gravel in streams is permitted subject to policies of the Whatcom County Comprehensive Plan and regulations for mining under WCC 23-100.08023.40.140 (Mining), and WCC Title 20 (Zoning).

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- iii. Dredging to obtain fill for restoration projects is permitted for approved MTCA/CERCLA projects and may be approved as a shoreline conditional use for other restoration projects.

9-2. The physical alignment and ecological functions and processes of streams, lakes, or marine shorelines shall be maintained, except to improve hydraulic function, water quality, fish or wildlife habitat, or fish passage.

3. Limitations on To protect public safety and compatibility with surrounding uses, dredge or disposal operations may be conditioned imposed to reduce proximity impacts, protect the public safety and assure compatibility with the interests of other shoreline users. Conditions may include to limits on periods and hours of operation, and type of machinery, and may require provision of landscaped buffers strips and/or fencing to address noise and visual impacts at land disposal or transfer sites.

- 10-4. Regular maintenance of an approved barge landing site shall not be considered dredging.

A-8. Additional Standards for Spoil-Dredge Material Disposal.

1. Any dredge material disposal shall be used as part of a program to restore or enhance shoreline ecological functions and processes, unless found to be infeasible.

- 1-2. Dredge material Spoil disposal on uplands away from the within shoreline jurisdiction is permitted only under the following conditions:

- a. Shoreline ecological functions and processes will be preserved, including protection of surface and ground water.
- b. Erosion, sedimentation, floodwaters, or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.
- c. Sites will be adequately screened from view of local residents or passersby on public rights-of-way.

3. Disposal of dredge material on shorelands or wetlands within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed for restoration or enhancement of shoreline ecological functions and processes, such disposal shall require a shoreline conditional use permit.

4. Dredge material Spoil disposal is prohibited on marine shorelines between the line of extreme low tide and below the ordinary high water mark, on lake shorelines or beds, and in streams; except that:

- a. dredge spoil material may be used in approved projects for the restoration or enhancement of shoreline ecological functions and processes, such as beach nourishment.
- b. Spoil disposal in open waters may be approved only in accordance with the Puget Sound Dredged Disposal Analysis (PSDDA) evaluation procedures for managing in-water disposal of dredged material; when approved by applicable agencies, which may include the U.S. Army Corps of Engineers pursuant to Section 10 (Rivers and Harbors Act) and Section 404 (Clean Water Act) permits, and Washington State Department of Fish and Wildlife hydraulic project approval (HPA); and when found to meet the following conditions:
- c. Land disposal is infeasible, less consistent with this program, or prohibited by law.

Comment [CES145]: This provision applies to upland areas within shoreline jurisdiction, away from the OHWM. Revised language for greater clarity.

Comment [DN146]: This language is pulled directly from WAC 173-26-231. Revised language to clarify that restoration and enhancement is the only instance in which this would be permitted.

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- ~~d. Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.~~
- ~~e. Offshore habitat will be protected, restored, or enhanced.~~
- ~~f. Adverse effects on water quality or biologic resources from contaminated materials will be mitigated.~~
- ~~g. Shifting and dispersal of spoil will be minimal.~~
- ~~h. Water quality will not be adversely affected.~~
- ~~b. Dredge material disposal at an open water disposal site approved through the auspices of the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit.~~

Comment [CES147]: Don't need this, since it doesn't need a shoreline permit

Comment [AP148]: Added per Periodic Review Checklist, Item 2019.b, and Scoping Document Item #21.

C. Supplemental Application Requirements.

B-D. In addition to the minimum application requirements specified in ~~WCC 23.60.050~~ WCC Title 22 (Land Use and Development), applications for dredging and material disposal use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:

- a. A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this program ~~and WCC Title 20 (Zoning)~~.
- b. A detailed description of the existing physical character, shoreline geomorphology, and biological resources provided by the area proposed to be dredged, including:
 - i. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on mean lower low water (MLLW) and have data points at a minimum of two-foot depth increments.
 - ii. A habitat survey must be conducted and WDFW must be contacted to ensure the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
 - iii. Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
- c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed.
 - i. Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.
 - ii. Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.
 - iii. Biological analysis of material to be dredged.
- d. A description of the method of materials removal, including facilities for settlement and movement.
 - i. Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.
 - ii. Frequency and quantity of project maintenance dredging.
- e. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:

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i. Spoils disposal area:

- (A) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
- (B) Size and capacity of disposal site;
- (C) Means of transportation to the disposal site;
- (D) Proposed dewatering and stabilization of spoils;
- (E) Methods of controlling erosion and sedimentation; and
- (F) Future use of the site and conformance with land use policies and regulations.

ii. Total initial spoils volume.

iii. Plan for disposal of maintenance spoils for at least a 50-year period.

- f. Hydraulic modeling studies sufficient to identify existing geohydraulic patterns and probable effects of dredging.

E. Regulations for Specific Shoreline Environment Designations.

2.1. In the Natural shoreline ~~area environment~~, dredging is prohibited except ~~that dredging is permitted~~ as an essential element of an approved shore restoration or enhancement plan, ~~subject to policies and regulations of this program.~~

2. In the Aquatic shoreline ~~area environment~~:

a. Dredging may be permitted as a shoreline conditional use subject to the use and development regulations of the abutting upland shoreline ~~area environment~~ designation.

b. ~~Dredging for a mutually designated reach of river with a provided, that the conditional use permit requirement may be waived upon county County and Ecology approval of a sediment management plan component for a mutually designated reach of river is permitted subject to the use and development regulations of the abutting upland shoreline area environment designation.~~

c. Maintenance dredging pursuant to WAC 173-27-140 is permitted ~~subject to the policies of and regulations of this program without a conditional use permit~~, provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization.

Comment [AP149]: Carried over from removed 'Shoreline Area Regulations.'

C. Shoreline Area Regulations.

A. ~~Urban. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

B. ~~Urban Resort. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

C. ~~Urban Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

D. ~~Shoreline Residential. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

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- 1 E. Rural. Dredging may be permitted as a conditional use subject to policies and regulations of this
- 2 program.
- 3 F. Resource. Dredging may be permitted as a conditional use subject to policies and regulations of
- 4 this program.
- 5 G. Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations
- 6 of this program.
- 7 H. Natural. Dredging is prohibited except that dredging is permitted as an essential element of an
- 8 approved shore restoration or enhancement plan, subject to policies and regulations of this
- 9 program.
- 10 I. Aquatic. Dredging may be permitted as a conditional use subject to the use and development
- 11 regulations of the abutting upland shoreline area designation; provided, that the conditional use
- 12 permit requirement may be waived upon county and ecology approval of a sediment
- 13 management plan component for a mutually designated reach of river. Maintenance dredging
- 14 pursuant to WCC 23.90.022(B) is permitted subject to the policies and regulations of this
- 15 program without a conditional use permit, provided the original constructed bottom contours
- 16 have been established and documented in a prior shoreline permit or authorization.

23.100.11023.40.090 Landfill and Excavation.

A. Policies.

- 19 A. Landfill and excavation should only be permitted to the minimum extent necessary to
- 20 accommodate an approved shoreline use or development and with assurance of no net loss of
- 21 shoreline ecological functions and processes. Enhancement and voluntary restoration of
- 22 landforms and habitat are encouraged.
- 23 B. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of
- 24 new uplands, unless it is part of an approved ecological restoration activity. Landfill should be
- 25 permitted in limited instances to restore uplands where recent erosion has rapidly reduced
- 26 upland area, to build beaches and protective berms for shore stabilization or recreation, to
- 27 restore or enhance degraded shoreline ecological functions and processes, or to moderately
- 28 elevate low uplands to make such uplands more suitable for purposes consistent with this
- 29 program.
- 30 C. Fill should not be allowed where shore stabilization works would be required to maintain the
- 31 materials placed.
- 32 D. Landfills and excavation should be located and developed so that water quality, hydrologic and
- 33 runoff patterns are not altered.
- 34 E. The predicted economic benefits of landfills and excavation should be weighed against long-
- 35 term cumulative impacts on ecological processes and functions.

A. Regulations.

Comment [CES150]: Addressed by use table now.

Comment [AP151]: This section is re-located from the General Regulations section (previously WCC 23.90.100) and revised to distinguish between fill and dredge material disposal, dredging, excavation, or mining.

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A. General.

1. ~~Landfill~~ Fill and excavation shall be ~~avoided to the extent feasible, and shall be minimized to the maximum extent practicable and~~ allowed only along with approved shoreline use and development activities that are consistent with this program. ~~Where necessary, fill in shoreline jurisdiction shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.~~

Comment [CES152]: Added pursuant to WAC 173-26-231(3)(c)

1-2. Excavation waterward of the OHWM or within wetlands shall be considered dredging or ~~gravel bar scalping~~ mining for purposes of this program.

3. Fill materials shall only be clean ~~sand, gravel, soil, rock, or similar material. Use of polluted dredge spoils or other solid or dangerous wastes is prohibited.~~

2-4. ~~Landfill and excavation within wetlands or~~ waterward of the ordinary high water mark shall only be permitted ~~through a shoreline conditional use permit~~ in limited instances for the following purposes ~~only~~, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities ~~that are consistent with this program:~~

Comment [CES153]: By definition, excavation in water is considered dredging and is covered in that section.

Comment [CES154]: Updated to comply with WAC 173-26-231(3)(c)

a. ~~Port development for~~ Water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports, are infeasible.

b. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.

c. Ecological restoration, ~~mitigation~~, or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.

d. ~~Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.~~

e-e. ~~Public access.~~

d. ~~Maintenance of lawfully established development.~~

e. ~~Development of shore stabilization projects, flood control, and instream structures.~~

f. ~~Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.~~

Comment [CES155]: Amended to be consistent w/ WAC 173-26-231(3)(c)

5. Fill shall not be used to create land to serve residential development.

3-6. ~~Landfills~~ or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.

4. ~~On marine shores, fill may be permitted in the foreshore where located at drift sector ends in low energy driftways, or on erosional pocket beaches for restoration and enhancement programs where the effect of the landfill's interruption of the littoral process can be mitigated.~~

5-7. ~~Landfills~~, beach nourishment, and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long-term appropriate use including lawful access and enjoyment of scenery.

6. ~~Perimeter banks shall generally be sloped no steeper than one foot vertical for every three feet horizontal unless a specific engineering analysis has been provided, and the administrator determines that the landfill blends physically and visually with existing topography.~~

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7.8. Fill shall be designed to avoid water quality impacts in accordance with local, state and federal regulations. A temporary erosion and sediment control (TESC) plan shall be provided required for all proposed landfill and excavation activities.

23.4010.080100 Flood Hazard Reduction Control Works and Instream Structures.

~~c. Flood control works and instream structures in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~A. Purpose and Need.~~

~~b. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, channel migration zone, or floodway should not be allowed.~~

~~c. Flood control works and instream structures should be planned and designed to be compatible with appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.~~

~~d. Flood control works should only be allowed in the shoreline if they are necessary to protect existing development and where nonstructural flood hazard reduction measures are infeasible.~~

~~e. Flood control works to protect existing development should be permitted only when the primary use being protected is consistent with this program, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.~~

~~A. Design Considerations:~~

~~f. Flood control works should incorporate native vegetation to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long term shoreline management. Such features include vegetated berms, vegetative stabilization including brush matting and buffer strips; and retention of existing trees, shrubs and grasses on stream banks.~~

~~g. Flood control works and instream structures should be located, designed, constructed and maintained so their resultant effects on geohydraulic shoreline processes will not cause significant damage to other properties or valuable shoreline resources, and so that the physical integrity of the shoreline process corridor is maintained.~~

~~h. To minimize flood damages and to maintain natural resources associated with streams, overflow corridors and other alternatives to traditional bank levees, revetments and/or dams should be considered. Setback levees and similar measures should be employed where they will result in lower flood peaks and velocities, and more effective conservation of resources than with high bank levees.~~

~~i. Recognizing the large number of physical variables to be considered in properly locating and designing flood control works and instream structures, such as dams and weirs, and the high probability that poorly located and inadequately designed works will fail and/or adversely affect properties and shore features, such works should be sited and designed consistent with appropriate engineering principles and WCC Title 17.~~

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j. ~~Nonstructural and nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to structural flood control works and instream structures. Nonregulatory and nonstructural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.~~

k. ~~Design of flood control works should incorporate continued long-term multiple use of shoreline resources by all appropriate user groups.~~

l.a. ~~Design of flood control works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood control works should not decrease public access or use potential of shorelines.~~

~~A. Coordination.~~

m. ~~In cooperation with other applicable agencies and persons, the county should continue to develop long-term, comprehensive flood hazard management plans, such as the Lower Nooksack River Comprehensive Flood Hazard Management Plan, to prevent needless flood damage, maintain the natural hydraulic capacity of floodways, and conserve valuable, limited resources such as fish, water, soil, and recreation and scenic areas.~~

n. ~~Planning and design of flood control works and instream structures should be consistent with and incorporate elements from applicable watershed management plans, restoration plans and/or surface water management plans.~~

~~Regulations.~~

~~A. Purpose and Need General.~~

1. Applicability. This section applies to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

2. Development in floodplains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the Department of Ecology.

3. New development or new uses in shoreline jurisdiction should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

4. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

a. Actions that protect or restore the ecosystem-wide processes or ecological functions.

Comment [CES156]: Language from WAC 173-26-221(3)(a).

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- b. Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- c. Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- d. Mining when conducted in a manner consistent with the environment designation and with the provisions of Chapter 23.40.140 (Mining).
- e. Bridges, utility lines, flood Hazard Reduction works, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- f. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- g. Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- h. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- i. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.
- 1-5. Structural flood hazard reduction control works shall be permitted only when it is demonstrated by engineering and scientific evaluations that:
- They are necessary to protect health/safety and/or existing development;
 - Nonstructural flood hazard reduction measures are infeasible; and
 - Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system or otherwise approved by Whatcom County Public Works' River and Flood Division.
- 2-6. Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through an geotechnical analysis performed by a qualified professional.
- 3-7. New ~~flood hazard reduction control~~ works are prohibited on estuarine shores, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.

Comment [CES157]: Updated text from WAC 173-26-221((3)(c))

Comment [RCE158]: Updated text from WAC 173-26-221((3)(c))

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4-8. Revetments ~~shall only be permitted for public projects, and~~ shall not be placed waterward of the OHWM ~~except for weirs and current deflectors where necessary to protect bridges and roads.~~

5. ~~Revetments and levees shall be designed consistent with appropriate engineering standards and WCC Title 17. Height shall be limited to the minimum required to protect the adjacent lands from the designed flood and demonstrated through hydraulic modeling that the height will not adversely impact shoreline ecological functions and processes.~~

9. ~~Weirs and current deflectors are permitted only when necessary to protect public bridges, roads, and levees.~~

6-10. Channelization projects that damage fish and wildlife resources, degrade recreation and aesthetic resources, or result in high flood stages and velocities shall not be permitted when feasible alternatives are available.

7-11. Flood ~~hazard reduction control~~ works and instream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The County may require reasonable conditions such as setbacks, buffers, or storage basins to achieve this objective.

8-12. ~~Flood hazard reduction works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood hazard reduction works should not decrease public access or use potential of shorelines.~~

Comment [CES159]: Moved from above.

B. Site Design and Operation.

1. The County shall require professionally engineered design of any proposed flood ~~hazard reduction control~~ works or instream structure.
2. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.
3. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for 150% of the cost of the structure shall be filed with the director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the state of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.
4. Natural instream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.
5. Flood ~~hazard reduction control~~ works and instream structures shall allow for normal groundwater movement and surface runoff.
6. Flood ~~hazard reduction control~~ works and instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided banks.

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- 6-7. ~~New~~ Structural flood ~~hazard reduction control~~ works shall be placed landward of associated wetlands, and designated habitat conservation areas, except for works that improve ecological functions, such as wetland restoration.
- 7-8. Where flood ~~hazard reduction control~~ works are necessary, they shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Levees that have already cut off point bars should be relocated where feasible to lower flood stages and current velocities.
- 8-9. Where levees are necessary to protect floodway fringe areas, they shall be located and designed to protect shoreline ecological functions and processes. Such works should be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and ~~utilize~~ use most of its natural flood water storage capacity.
- 9-10. No motor vehicles, appliances, other similar structures or parts thereof; nor structure demolition debris; nor any other solid waste shall be used for flood ~~hazard reduction control~~ works.
11. Cut-and-fill slopes and back-filled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs, or trees to prevent loss of shoreline ecological functions and processes.

A. ~~Shoreline Area Regulations~~

1. ~~Urban. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
2. ~~Urban Resort. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
3. ~~Urban Conservancy. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control are prohibited.~~
4. ~~Shoreline Residential. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
5. ~~Rural. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~
6. ~~Resource. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~
7. ~~Conservancy. Flood control works and instream structures are permitted subject to policies and regulations; provided, that channelization or dams for flood control are prohibited.~~
8. ~~Natural. Flood control works and instream structures are prohibited except for normal maintenance and repair.~~
9. ~~Aquatic. Flood control works and instream structures are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

Comment [CES160]: Covered by use table now.

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23.090.090-110 Forest Practices.

A. Policies.

- A. Forest lands should be reserved for long-term forest management and such other uses as are compatible with the dominant use. Other more intensive and incompatible uses tending to impair the dominant use should be discouraged from locating on forest lands.
- B. Forest practices should maintain high levels of water quality, as well as surface and ground water movement patterns.
- C. Forest practices should minimize damage to wetlands, fish and wildlife species and habitats, especially aquatic habitats.
- D. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.
- E. Forest practices should maintain or improve the quality of soils and minimize erosion.
- F. 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.

B. Regulations.

A. General.

1. All forest practices undertaken on shorelines shall comply with the applicable policies and provisions of the Forest Practices Act, Chapter 76.09 RCW as amended, and any regulations adopted pursuant thereto (WAC Title 222), as administered by the Department of Natural Resources.
2. Unless otherwise stated, the vegetation ~~conservation management~~ regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and WCC Chapter 16.16 (Critical Areas), and shall be limited to the minimum necessary to accommodate an approved use.
3. A forest practice that only involves timber cutting is not a development under the Act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.
4. For the purposes of this program, preparatory work associated with the Any conversion of land to a non-forestry uses and/or development use not compatible with forestry shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, including vegetation conservation, and shall be must:
 - a. Comply with the applicable policies and regulations of this program.

Comment [AP161]: This section has been moved from the General Regulations section (previously WCC 23.90.110).

Comment [CES162]: Revised section per Scoping Document, Item #17g.

Comment [AP163]: Moved from Vegetation Management section (WCC 23.30.040).

Comment [CES164]: Added per Periodic Review Checklist, Item 2017.e, and Scoping Document Item #2b. This has also been addressed in the definitions section.

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b. ~~Limited the conversion~~ to the minimum necessary, while complying with the purpose of the shoreline environment designation, general policies and regulations, and specific shoreline use and modification policies and regulations on the subject property;

a-c. ~~Ensure no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources, and values provided for in RCW 90.58.020, such as navigation, recreation, and public access.~~

1. ~~Forest practices roads are prohibited on marine or lake shores where slopes exceed 35 percent except when necessary to obtain access to road networks on land outside the Act's jurisdiction.~~

2. ~~Cutting of more than 30 percent of the merchantable trees over a 10-year period within 50 feet of the bank rim on feeder bluffs and landslide hazard areas is prohibited. Only selective thinning methods that minimize erosion potential shall be employed.~~

5. ~~Per RCW 90.58.150, with~~ respect to timber situated within shoreline jurisdiction along shorelines of statewide significance, only selective commercial timber cutting may be permitted so that no more than 30 percent of the merchantable timber may be harvested in any 10-year period; provided ~~that~~:

a. ~~Other~~ timber harvesting methods may be permitted as a conditional use permit in those limited instances where topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and

b. ~~Timber removal that is to the minimum necessary for the conversion of land for other uses may be permitted.~~

A. ~~Shoreline Area Regulations:~~

3. ~~Urban. Forest practices are prohibited.~~

4. ~~Urban Resort. Forest practices are prohibited.~~

5. ~~Urban Conservancy. Forest practices are prohibited.~~

6. ~~Shoreline Residential. Forest practices are prohibited.~~

7. ~~Rural. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~

8. ~~Resource. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~

9. ~~Conservancy. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~

~~23.100-170-40.120 Industrial and Port Development.~~

a. ~~Industrial and port development in shoreline areas outside of the Cherry Point management area shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

Cherry Point Management Area. All industrial and port development in shorelines within the Cherry Point management area as defined in Chapter 23.110 WCC shall be subject to the policies and regulations found in WCC 23.100-170 instead of the policies and regulations of this section, unless otherwise specified therein.

A. ~~Policies.~~

Comment [CES165]: Addressed by use table now

Comment [P/C166]: P/C voted 9-0 to make 23.40.125 a subset of these rules, so that 23.40.120 applies to all industrial and port development and 23.40.125 are additional rules for the CPMA; and to remove redundancies.

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- 1 A. Shoreline sites particularly suitable for development such as deep water harbors with access to
- 2 adequate rail, highway and utility systems should be reserved for water dependent or water-
- 3 related industrial and port development.
- 4 B. In order to provide adequate shoreline for future water dependent and water related uses,
- 5 industrial or port development at deep water sites should be limited to those uses that produce
- 6 the greatest long-term economic base. Industrial and port development that is consistent with
- 7 this program should be protected from encroachment or interference by incompatible uses with
- 8 less stringent siting requirements, such as residential or commercial uses. Mixed use
- 9 development, including non-water dependent uses, should only be allowed when they include
- 10 and support water dependent uses.
- 11 C. Regional needs for port facilities should be carefully considered in reviewing new port proposals
- 12 and in allocating shorelines for such development. Such reviews or allocations should be
- 13 coordinated with port districts, adjacent counties and cities, and the state. Existing, officially
- 14 designated State Harbor Areas should be used for new port development to the maximum
- 15 extent whenever possible.
- 16 D. Multiple use of industrial and port facilities is encouraged to limit duplicative facilities and
- 17 reduce adverse impacts. Multiple use should be implemented in the following manner:
- 18 b. Cooperative use of piers, cargo handling, storage, parking and other accessory facilities
- 19 among private or public entities should be required in industrial or port facilities whenever
- 20 feasible. New facilities for water dependent uses should be allowed only after assessment of
- 21 the potential for shared use of existing facilities.
- 22 c. Industrial and port developments should provide opportunities for physical and/or visual
- 23 public shoreline access in accordance with the public access policies, including recreational
- 24 use of undeveloped shorelines not needed for port or industry operations; provided, that
- 25 such uses are safely compatible with facility operations.
- 26 A. Industrial and port development in the shoreline should be located and designed to avoid
- 27 significant adverse impacts to other shoreline uses, resources, and values, including shoreline
- 28 geomorphic processes, water quality, fish and wildlife habitat, commercial aquaculture, and the
- 29 aquatic food chain.
- 30 B. Restoration of impaired shoreline ecological functions and processes should be encouraged as
- 31 part of industrial and port development.
- 32 ~~B. Regulations.~~
- 33 A. ~~Purpose and Need~~General.
- 34 ~~1. Water dependent industrial and port uses designed, developed and operated consistent with~~
- 35 ~~the policies and regulations of this program shall be given preference over all other uses on the~~
- 36 ~~shoreline.~~
- 37 1. Prior to approval of an application~~water dependent industrial or port uses~~, the
- 38 ~~administrator~~Director shall review a proposal for design, layout, and operation of the proposed
- 39 use and shall ~~determine whether~~make specific findings that the use ~~qualifies as a~~is water-
- 40 dependent, water-related, water-enjoyment or non-water-oriented industrial and port use.

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2. All harbor areas, established pursuant to Article XV of the Washington State Constitution, that have reasonable commercial navigational accessibility and necessary support facilities such as transportation shall be reserved for water-dependent and water-related uses that are associated with commercial navigation unless a specific finding is made in the permit review process that adequate shoreline is reserved for navigation use elsewhere in the affected harbor area.
3. Industrial and port uses ~~that result in no net loss of shoreline ecological functions and processes~~ are allowed subject to ~~the policies and regulations of WCC 23.90.030 and the specific criteria~~ below:
 - a. ~~Water-dependent industrial and port uses shall be given first preference over non-waterdependent water-related and water-enjoyment industrial and port uses. Prior to approval of water-dependent industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-dependent use.~~
 - ~~a-b~~ Water-related industrial and port uses shall be given second preference over non-water dependent industrial and port uses.
 - ~~b-c~~ Water-related industrial and port uses may not be approved if they displace existing water-dependent uses. ~~Prior to approval of water-related industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-related use.~~
 - ~~e-d~~ Water-enjoyment industrial and port uses may be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. ~~Prior to approval of water-enjoyment industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-enjoyment use.~~
 - ~~d-e~~ Non water-oriented industrial and port uses may be permitted where located on a site physically separated from the shoreline by another property in separate ownership or a public right of way such that access for water-oriented use is precluded. All other non-water-oriented industrial and port uses are prohibited in the shoreline, except for those identified above; provided that unless the use provides significant public benefit with respect to the objectives of the Act and the following is:
 - i. The proposal is part of a mixed use project that includes a water-oriented use; or
 - ii. The proposal is on a site where navigability is severely limited; or
 - ~~iii.~~ The proposal does not occupy space designated for water-dependent or water-related use identified in a project permit approval.
 - f. Water-oriented industrial and port uses shall provide public access in accordance with the provisions of WCC 23.30.060 (Public Access).
 - ~~e-f~~ When permitted, non-water-oriented industrial and port uses shall provide public access and/or restoration as follows:

Comment [CES167]: To be consistent w/ WAC 173-26-241(3)(f)

Comment [AP168]: Updated per Commercial example.

Comment [CES169]: To be consistent w/ WAC 173-26-241(3)(f)

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- 1 i. ~~Non-water-oriented industrial and port uses shall provide public access shall be in the~~
2 form of unrestricted open space. ~~The administrator shall determine the amount of~~
3 ~~required access in accordance with the provisions of WCC 23.90.080 on a case-by-case~~
4 ~~basis.~~
- 5 ii. If no water-oriented uses are located on or adjacent to the water as part of a mixed use
6 development, 80% of the shoreline and associated buffers shall be restored to provide
7 shoreline ecological functions that approximate the functions provided by the site in
8 natural conditions.
- 9 iii. The requirements in ~~subsections (B)(1)(c)(v)(A) and (B)~~ of this section may be modified
10 when:
11 (A) The site is designated as a public access area by a shoreline public access plan, in
12 which case public access consistent with that plan element shall be provided; or
13 (B) Specific findings are made demonstrating that the size of the parcel and the
14 presence of adjacent uses preclude restoration of shoreline ecological functions.
15 Where on-site restoration is infeasible, equivalent off-site restoration shall be
16 provided ~~consistent with the policies and regulations of this program.~~
- 17 iv. Buffers shall be designed as appropriate to protect shoreline resources based on a site-
18 specific restoration assessment plan, ~~and may differ from the standard critical area~~
19 buffer dimensions provided in Chapter 16.16 WCC; ~~provided, that the building envelope~~
20 for the proposed non-water-oriented use shall be based on current site conditions.
- 21 v. If water-oriented uses are located on or adjacent to the water, the remaining
22 undeveloped water frontage that is not devoted to water-dependent use shall be
23 preserved if in a substantially unaltered condition. If the site has been previously altered
24 by past development, the balance of the site may be reserved for future water-related
25 use.
- 26 vi. The requirements of this section shall not apply to those ~~non-water-oriented~~ industrial
27 or port uses located on a site physically separated from the shoreline where access to
28 the land/water interface is precluded; provided, that such conditions were lawfully
29 established prior to the effective date of this program.
- 30 ~~f.h.~~ Interim use of facilities approved and/or permitted for water-dependent use for non-water-
31 dependent uses may be approved by a shoreline conditional use permit under the following
32 conditions:
33 i. A specific occupancy plan has been approved that allows interim uses for a specific
34 period while the market for water-dependent uses is being developed, and the
35 proposed interim use is consistent with the occupancy plan.
36 ii. The period of interim lease or commitment of the space shall not exceed five years. At
37 the end of five years, a new application for interim use shall be submitted.
38 iii. A good faith effort to obtain water-dependent uses has been made and suitable tenants
39 were not found. The period of the search for water-dependent uses, the notice of
40 availability, listing or advertising employed, and any inquiries received shall be
41 documented.

Comment [CES170]: Updated for clarity.

Comment [AP171]: Updated per Commercial example.

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- iv. No permanent improvements will be made to the space that requires more than five years of occupancy to repay the investment. No permanent improvements will be made that will reduce the suitability of the space for water-dependent use.
4. Required setback areas shall not be used for storage of industrial equipment or materials, or waste disposal, but may be used for outdoor recreation. Portions of such setbacks may be used for motor vehicle parking if design of such facilities is consistent with this program and critical area regulations in WCC Chapter 16.16.
5. Disposal or storage of solid or other industrial wastes is not permitted on shorelines; except that liquid waste treatment facilities may be permitted as a shoreline conditional use if it is demonstrated that a shoreline location is required or where it is demonstrated that an alternative site outside of the shoreline is not feasible; and further excepted, that land application of waters used in the processing of fruits and vegetables within the shoreline is permitted as a shoreline conditional use.
6. Marine rafts shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
- b. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.
- A. Additional Standards for Log Rafts and Storage.
 1. Storage of logs is prohibited in water-bodies, except where an upland location is not feasible; provided, that no ~~new~~ log storage may be allowed in marine or estuarine waters or tidelands.
 2. Log rafting shall be allowed in cases where overland transportation of logs would produce unacceptable transportation impacts, or for transportation of logs from islands or from other locations in Puget Sound. Areas for assembly and disassembly of log rafts shall meet all standards below for log storage.
 3. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
 4. Log rafting or storage operations are required to implement the following, whenever applicable:
 - ~~b.a.~~ Logs shall not be dumped, stored, or rafted where grounding will occur.
 - ~~c.b.~~ Easy let-down devices shall be provided for placing logs in water.
 - ~~d.c.~~ Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and other debris on the land and docks around dump sites shall be fully contained and kept out of the water.
 - ~~e.d.~~ Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.
 5. Impervious pavement is required for log yards where the wet season water table is less than four feet below surface level in order to reduce waste buildup and impacts on ground ~~water~~ and surface water.
 6. Stormwater management facilities shall be provided to protect the quality of affected waters.

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- 1 7. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat
- 2 conservation areas.
- 3 8. Log storage facilities must be sited to avoid and minimize the need for dredging in order to
- 4 accommodate ~~new~~ barging activities at the site.
- 5 9. Log storage facilities shall be located in existing developed areas to the greatest extent feasible.
- 6 If a ~~new~~ log storage facility is proposed along an undeveloped shoreline, an alternatives analysis
- 7 shall be required.
- 8 10. A berm must be located around the outer edge of the upland sort surface using rocks, or other
- 9 suitable materials to prevent loss of wood debris into the water.
- 10 11. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded
- 11 nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log
- 12 rafts. Log booming activities include the placement in or removal of logs and log bundles from
- 13 the water, and the assembly and disassembly of rafts for water-borne transportation.
- 14 12. A debris management plan describing the removal and disposal of wood waste must be
- 15 developed and submitted to the County. Debris monitoring reports shall be provided, when ~~ne~~
- 16 stipulated.
- 17 13. Existing in-water log storage and log booming facilities in critical habitats ~~utilized~~ used by
- 18 threatened or endangered species classified under ESA shall be reevaluated if use is
- 19 discontinued for two years or more, or if substantial repair or reconstruction is required. The
- 20 evaluation shall include an alternatives analysis in order to determine if logs can be stored
- 21 upland and out of the water, or if the site should be used for other purposes that would have
- 22 lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the
- 23 potential for moving all, or portions of, log storage and booming to uplands.

~~B. Hydropower Development~~

- 25 ~~b. Hydropower facilities shall be located, designed, and operated to minimize impacts to fish and~~
- 26 ~~wildlife resources including spawning, nesting, and rearing habitat, and migratory routes, and~~
- 27 ~~critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and~~
- 28 ~~processes shall be implemented in accordance with WCC.~~
- 29 ~~c. Hydropower facilities shall be located, designed, and operated to protect and minimize impacts~~
- 30 ~~to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land;~~
- 31 ~~scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or~~
- 32 ~~educational value.~~
- 33 ~~d. Hydropower facilities shall accommodate public access to, and multiple use of, the shoreline.~~
- 34 ~~e. For all dams that are not regulated by either the Federal Energy Regulatory Commission~~
- 35 ~~licensing procedures, or the State Department of Ecology reservoir permit requirements, a~~
- 36 ~~maintenance agreement and construction bond for 150 percent of the cost of the structure shall~~
- 37 ~~be filed with the director of the Public Works Department prior to construction. The~~
- 38 ~~maintenance agreement shall specify who is responsible for maintenance, shall incorporate the~~
- 39 ~~maintenance schedule specified by the design engineer, shall require annual inspections by a~~
- 40 ~~civil engineer licensed in the state of Washington and shall stipulate abandonment procedures~~
- 41 ~~which shall include, where appropriate, provisions for site restoration.~~

Comment [CES172]: Moved to Utilities section

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f. ~~The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.~~

C. Regulations for Specific Shoreline Environment Designations.

1. In the Rural shoreline environment, permitted water-oriented port development and industrial facilities are limited to those used for processing, manufacturing, and storage of finished or semi-finished goods.

2. In the Resource shoreline environment, water-oriented facilities for the processing, manufacturing, and storage of natural resource products are permitted. Other water-oriented industrial or port use and development may be permitted as a shoreline conditional use. Non-water-oriented facilities for the processing, manufacturing, and storage of natural resource products may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.

3. In the Aquatic shoreline environment, water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline environment designation.

4. In the Cherry Point Management Area, WCC 23.40.125 shall also apply. Where this section differs from WCC 23.40.125, the regulation(s) of that section shall govern.

A. Shoreline Area Regulations.

1. Urban. Water-oriented industrial and port use and development are permitted subject to policies and regulations of this program. Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section. Dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.

2. Urban Resort. Port development limited to passenger terminals is permitted. All other industrial or port use and development is prohibited.

3. Urban Conservancy. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.

4. Shoreline Residential. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.

5. Rural.

a. Water-oriented port development and industrial facilities for processing, manufacturing, and storage of finished or semi-finished goods are permitted.

b. Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section.

c. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.

6. Resource.

Comment [CES173]: Moved from 'Shoreline Area Regulations.'

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- a. ~~Water oriented facilities for processing, manufacturing, and storage of natural resource products are permitted subject to the policies and regulations of this program.~~
- b. ~~Non-water oriented facilities for processing, manufacturing and storage of natural resource products, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section, and other water oriented industrial or port use and development may be permitted as a conditional use.~~
- c. ~~Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
- d. ~~Other non-water oriented industrial or port use and development are prohibited.~~
7. ~~Conservancy, industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
8. ~~Natural industrial or port use and development are prohibited.~~
9. ~~Aquatic-Water dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Log storage may be permitted as a conditional use.~~

~~23.410.210-125~~ Cherry Point Management Area.

A. ~~Policies.~~

B. ~~Purpose and Intent.~~

C. ~~The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This section identifies policies and regulations for water-dependent industrial activities that apply in addition to specific other elements of this program as referenced herein.~~

D. ~~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.~~

E. ~~Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require marine access for marine cargo transfer, including oil and other materials. For this reason, water dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.~~

F. ~~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.~~

Comment [AP174]: Moved from 23.40.220.

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- 1 ~~G. All development that is to be located within the Cherry Point management area, as defined in~~
2 ~~Chapter 23.110 WCC, shall be subject to the policies and regulations found in this section, and shall~~
3 ~~not be subject to the policies and regulations found in WCC 23.100.010 through 23.100.160, nor~~
4 ~~Chapter 23.90 WCC, unless otherwise referenced in this section. The policies and regulations found~~
5 ~~in this section are applicable only within the geographic boundaries of the Cherry Point~~
6 ~~management area and do not apply elsewhere in the county. In the event that the provisions of this~~
7 ~~section conflict with other applicable referenced provisions of this program, the policies and~~
8 ~~regulations that are most protective of shoreline resources shall prevail.~~
- 9 ~~H. Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial~~
10 ~~facilities should be allowed in the Cherry Point management area. Industry within the major~~
11 ~~port/industrial urban growth area, as designated in the County Comprehensive Plan, which is not~~
12 ~~water-dependent should locate away from shoreline jurisdiction.~~
- 13 ~~I. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking~~
14 ~~and other accessory facilities are encouraged.~~
- 15 ~~J. Public Access.~~
- 16 ~~K. Where appropriate, industrial and port development within the Cherry Point management area~~
17 ~~should provide public beach and shoreline access in a manner that does not cause interference with~~
18 ~~facility operations or present hazards to life and property. This may be accomplished through~~
19 ~~individual action or by joint, coordinated action with other developers and landowners, for example,~~
20 ~~by setting aside a common public access area.~~
- 21 ~~L. Special emphasis should be given to providing public beach and shoreline access for recreational~~
22 ~~opportunities including but not limited to crabbing, small craft launching, surf fishing, picnicking,~~
23 ~~clamming, and beach walking.~~
- 24 ~~M. Public access within the Cherry Point management area should be consistent with the Whatcom~~
25 ~~County Parks and Recreation Open Space Plan.~~
- 26 ~~N. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological~~
27 ~~resources in the Cherry Point management area, consideration of probable effects of all~~
28 ~~development proposals on shoreline ecological functions and processes should be assessed with the~~
29 ~~other long-term statewide interests. New port development that requires dredge and fill should not~~
30 ~~be permitted in the Cherry Point management area due to potential adverse effects on ecological~~
31 ~~functions, including fish and shellfish habitat and geohydraulic processes.~~
- 32 ~~O. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the~~
33 ~~scenic character of the area and to ensure visual compatibility with adjacent nonindustrial-zoned~~
34 ~~properties.~~
- 35 ~~P. Site Development. All development should be constructed and operated in a manner that, while~~
36 ~~permitting water-dependent uses, also protects shoreline resources, their ecological functions and~~
37 ~~processes, and that incorporates the following:~~
- 38 ~~Q. Low impact development approaches to avoid or minimize adverse impact to topography,~~
39 ~~vegetation, water quality, fish and wildlife habitat, and other natural site conditions;~~
- 40 ~~R. Adequate temporary and permanent management measures to control erosion and sediment~~
41 ~~impacts during construction and operation; and~~

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~~S. Adequate stormwater management facilities.~~

~~T. Regulations.~~

~~A. All uses and modifications within the Cherry Point Management Area shall be subject to the regulations found in this section (as well as those of Title 20, Zoning), and not those of WCC 23.40.120 (Industrial and Port Development). Where this section differs from WCC 23.40.120, the regulation(s) of this section shall govern.~~

~~A.B. Allowed Uses.~~

1. Water-dependent industrial and port uses are allowed within the Cherry Point management area ~~only upon finding; provided, that specific findings are made in a shoreline substantial development permit or conditional use permit~~ that:
 - a. Policies for optimum implementation of the statewide interest have been achieved through protection of shoreline ecological functions and processes;
 - b. The long-term statewide benefits of the development have been considered with the potential adverse impacts on ecological functions; and
 - c. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated in the proposal.

~~2. Fuel Uses – Shoreline Permits and Requirements:~~

- a. Existing legal fossil or renewable fuel refinery operations or existing legal fossil or renewable fuel transshipment facilities [as of XXX effective date] are considered permitted shoreline substantial developments.
- b. Expansions of existing legal fossil-fuel refineries or expansions of existing legal fossil-fuel transshipment facilities shall require a shoreline conditional use permit.
- c. New or expansion of existing legal renewable fuel refinery or renewable fuel transshipment facility shall require a shoreline conditional use permit.

Comment [CES175]: To do: need to add date once it's finalized.

~~2-3.~~ Water-related and water-enjoyment uses are allowed only as part of public access and public recreation development, subject to the ~~findings criteria~~ in subsection (B)(1)(a) of this section.

~~3-4.~~ Accessory ~~development uses~~, which ~~does~~ not require a shoreline location in order to carry out ~~its~~ ~~their~~ support functions, shall be sited away from the land/water interface and landward of the principal use. Accessory ~~development uses~~ shall observe critical area buffers in WCC Chapter 16.16. Accessory ~~development uses~~ includes, but ~~are~~ is not limited to, parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land transport ~~development~~.

~~4-5.~~ Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that are located and designed to minimize shoreline alteration are permitted.

~~6.~~ Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

~~5-7.~~ Liquid manure storage facilities and spreading and animal feeding operations and confined animal feeding operations shall be prohibited.

Comment [DN176]: Added per Council's pending draft fossil fuel amendments.

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~~B-C.~~ Public Access.

1. Public access shall be provided in accordance with WCC 23.930.0780 (Public Access) unless it is demonstrated that public access poses significant interference with facility operations or hazards to life or property.
2. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access may be provided in accordance with WCC 23.930.0780 at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include interpretive centers and displays that explain maritime history and industry; provided, that visual access to the water is also provided.
3. As an alternative to on-site public access facilities, public access may be provided in accordance with a public access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

~~C-D.~~ Critical Areas. In addition to meeting the provisions of WCC 23.30.01090-030, (Ecological

Protection) and critical areas, development and alteration shall not be located or expanded within critical areas designated pursuant to WCC Chapter 16.16 except where the site is approved for water-dependent use, and the following are met:

1. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with WCC 23.930.0130 (Ecological Protection).
2. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade the existing water quality within the wetland.
3. The minimum required setback from the OHWM for all industrial and port facilities, including development components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.
4. Development and alteration other than recreation development for public and quasi-public shoreline access is prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained subject to the provisions of WCC 23.50.070 Chapter 23.50 (Nonconforming Uses, Structures, and Lots).

~~D-E.~~ Location and Design.

1. Piers.

a. Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one pier, in addition to those in operation as of January 1, 1998.

~~a-b.~~ Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the movement of material and cargo from land to water and water to land. The length of piers shall not extend beyond that which is necessary to accommodate the draft of the vessels intending to use the facility.

Comment [CES177]: Deleted per Council's pending draft fossil fuel amendments

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- 1 | ~~b-c.~~ Piers shall be designed to minimize interference in the intertidal zone and adverse impacts
2 | to fish and wildlife habitats.
- 3 | ~~e-d.~~ Piers shall be designed to minimize impacts on steep shoreline bluffs.
- 4 | ~~d-e.~~ All pilings in contact with water shall be constructed of materials such as concrete, steel, or
5 | other materials that will not adversely affect water quality or aquatic plants or animals.
6 | Materials used for decking or other structural components shall be approved by applicable
7 | state agencies for contact with water to avoid discharge of pollutants from wave splash,
8 | rain, or runoff. Wood treated with creosote, copper chromium arsenic or
9 | pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with
10 | chemically treated wood is allowed for maintenance purposes where use of a different
11 | material such as steel or concrete would result in unreasonable or unsafe structural
12 | complications; further provided, that where such replacement exceeds 20 percent of the
13 | existing pilings over a 10-year period, such pilings shall conform to the standard
14 | construction provisions of this section.
- 15 | ~~e-f.~~ All piers on piling structures shall have a minimum vertical clearance of one foot above
16 | extreme high water.
- 17 | ~~f-g.~~ Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not
18 | allowed on piers, except for temporary storage under emergency situations, including oil
19 | spill cleanup. Bulk storage means non-portable storage in fixed tanks. Secondary
20 | containment shall be provided for portable containers.
- 21 | ~~g-h.~~ All piers shall be located and designed to avoid impediments to navigation and to avoid
22 | depriving other properties of reasonable access to navigable waters. All piers shall be
23 | marked with navigational aids and approved for compliance with U.S. Coast Guard
24 | regulations.
- 25 | 2. Dredging.
- 26 | a. Dredging to accommodate water access to, or construction of, new development is
27 | prohibited. New development shall be located and designed to avoid the need for dredging.
28 | Dredging for existing development shall be the minimum necessary and shall minimize
29 | interference in the intertidal zone and impacts to fish and wildlife habitats.
- 30 | ~~b.~~ Dredging operations, including spoil disposal, shall be conducted in accordance with policies
31 | and regulations in WCC 23.90.120, (B)(4) and (5), Dredging.
- 32 | ~~e-b.~~ Dredging is prohibited in the accretion shoreform and backshore wetland areas ~~described in~~
33 | ~~Appendix C of this title.~~
- 34 | 3. ~~Landfill~~ is prohibited, except for the minimum necessary to access piers or other structures that
35 | provide access to the water. Pier design should accommodate the connection between the pier
36 | and uplands by employing a pile-supported structure to the point of intersection with stable
37 | upland soils. ~~Limited landfill may be allowed for pier access that does not extend further toward~~
38 | ~~the OHWM than existing topography. Any fill or excavation waterward of the OHWM requires a~~
39 | ~~shoreline conditional use permit.~~
- 40 | 4. Excavation/Stabilization.

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- a. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration will adversely affect the existing littoral drift process. ~~New development shall avoid, rather than modify, feeder bluffs.~~
 - b. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
5. ~~Shoreline stabilization defense works~~ shall be regulated in accordance with WCC ~~23.100.130~~ 23.40.190 and be consistent with the conservancy and aquatic shoreline ~~area~~ environment regulations of that section.

E-F. Adjacent Use.

1. ~~New or expanded port~~ or industrial development adjacent to properties which are zoned for nonindustrial purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare; and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
2. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for non-port or non-industrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields and screening.
3. The minimum setback from side property lines which intersect the OHWM for industrial and port development shall be 60 feet; provided, that:
 - i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard houses, power vaults or transformers; and
 - ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
4. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but may be used for public access or outdoor recreation.

F-G. Oil and Hazardous Materials.

1. Release of oil or hazardous materials on shorelines is prohibited.
2. A management plan shall be developed for ~~new~~-permitted or conditionally permitted development for the safe handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this section.
3. Necessary spill containment facilities associated with existing development may be permitted within shoreline jurisdiction where there are no feasible alternatives.
- ~~4. Recreational Development. All recreational development shall comply with the policies and regulations of WCC 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.~~

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5. ~~Archaeological, Historic and Cultural Resource Management. All development associated with archaeological, historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070.~~

23.40.130 Land Division

A. Additional Standards for Residential Divisions General.

1. ~~Land divisions, including boundary line adjustments, shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel.~~

1-2. All ~~new subland~~ divisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of WCC ~~23.30.050~~ 23.30.040, together with replanting and control of invasive species within setbacks and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.

2. ~~Residential lots created through land division in the shoreline shall only be permitted when the following standards are met:~~

3. Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.

4. ~~New~~ Land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. ~~New~~ Land division that would require shoreline stabilization is prohibited.

5. ~~New or expanded subdivisions and all multiunit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided, that such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four or fewer lots.~~

6-5. ~~New or amended subland divisions of four or fewer lots adjacent to the shoreline shall provide common access to the shoreline for all lots, consistent with , except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in WCC 23.930.0780 (Public Access) and this section.~~

7-6. All ~~new sub land~~ divisions shall record a prohibition on ~~new~~ private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in WCC ~~23.40.150~~ 100.090 (Moorage), including demonstration that ~~public and private~~ marinas and ~~other boating facilities~~ launch ramps are not sufficient to meet the moorage needs of the subdivision.

8-7. Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.

9-8. Substandard shoreline lots unsuitable for development of a primary permitted use under the WCC ~~Official Zoning Ordinance~~ (Title 20 (Zoning)) and this program shall not be subdivided.

10-9. ~~Land divisions of more than four lots and, including subdivision of land for more than four parcels, shall incorporate public access to publicly owned shorelines or public water~~

Comment [CES178]: Moved from Residential section, as there are more than just residential land divisions (e.g., commercial, industrial, etc.)

Comment [CES179]: Covered elsewhere.

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~~body~~shorelines of the state as provided for in WCC 23.390.0780 unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:

- a. Subdivisions ~~within the shoreline~~ that have views of water areas shall provide a public pedestrian viewing area.
- b. Subdivisions adjacent to ~~public waterways~~waters of the state and ~~marine waters~~ shall provide access to a point ~~that abuts~~tings the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.
- c. Subdivisions subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

~~11-10.~~ Clustering and other low-impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines.

23.410.120-140 Mining.

~~Mining in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

A. Policies.

- A. ~~Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources together equal or outweigh the benefits from mining.~~
- B. ~~Mining should not interfere with public recreation on the shoreline.~~
- C. ~~Mining should be located and operated so as to provide long-term protection of water quality, fish and wildlife, and fish and wildlife habitat.~~
- D. ~~Mining, particularly surface or strip mining, should provide for timely restoration of disturbed areas to a biologically productive, semi-natural, or other useful condition through a reclamation process consistent with regulations administered by the Department of Natural Resources and other applicable county standards.~~
- E. ~~Mining of marine and lake shores or accretional shoreforms, such as point bars, that have a high value for recreation or as fish or wildlife habitat should generally not be permitted.~~
- F. ~~Mining should only be permitted on accretion point and channel bars where appropriate studies and detailed operation plans demonstrate that:~~
 - a. ~~Fish habitat, upland habitat and water quality will not be significantly impacted; and~~
 - b. ~~The operation will not adversely affect geohydraulic processes, channel alignment, nor increase bank erosion or flood damages.~~
- G. ~~Mining operations should be located, designed, and managed so that other appropriate uses are not subjected to substantial or unnecessary adverse impacts from noise, dust or other effects of~~

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the operation. The operator may be required to implement measures such as buffers, limited hours, or other mitigating measures for the purpose of minimizing adverse proximity impacts.

B. Regulations.

A. General.

1. The removal of gravel for flood management purposes shall be regulated in accordance with the policies-regulations ~~for under of~~ WCC ~~23.100.060~~23.40.100 (Flood ~~Hazard Reduction Control~~ Works and Instream Structures) ~~as well as this section.~~

~~1-2. New m~~ Mining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with WCC ~~23.90.030~~23.30.010 (Ecological Protection). ~~Mining should not be approved where it could interfere with shoreline ecological functions or processes or cause irreparable damage to shoreline resources or features such as accretion shoreforms.~~ Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

3. Permit requirements for mining should be coordinated with the requirements of RCW Chapters 78.44 (Surface Mining) and 77.55 (Construction Projects in State Waters).

4. The proposed subsequent use of mined property shall be consistent with the provisions of the environment designation in which the property is located. Reclamation of disturbed shoreline areas shall provide appropriate ecological functions consistent with the setting.

5. Pursuant to RCW 90.48.615, motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout is prohibited. This section does not apply to:

a. Aquatic mining using nonmotorized methods, such as gold panning, if the nonmotorized method does not involve use of a gravity siphon suction dredge;

b. Mining operations where no part of the operation or discharge of effluent from the operation is to waters of the state;

c. Surface mining operations regulated by the State Department of Natural Resources under Title 78 RCW;

d. Metals mining and milling operations as defined in chapter 78.56 RCW; or

e. Activities related to an industrial facility, dredging related to navigability, or activities subject to a clean water act section 404 individual permit.

a. Mining shall not be permitted in critical areas except as a part of an approved flood control program or in conjunction with a habitat restoration or enhancement plan; provided, that such activities may be permitted where demonstrated to be water dependent. A determination of water dependency shall be based on evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on

Comment [DN180]: Removed sections which are not required by the WAC and provided only WAC specific requirements, except for the retained section on scalping, below.

Comment [CES181]: From RCW 90.48.615.

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analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (Chapter 43.21C RCW), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).

Comment [AP182]: Covered by CAO.

- b. Application for permits for mining operations shall be accompanied by operation plans, reclamation plans and analysis of environmental impacts in accordance with WCC 20.72.700. Such information shall provide sufficient documentation to make a determination as to whether the project will result in net loss of shoreline ecological functions and processes during the course of mining and after reclamation. Creation, restoration, or enhancement of habitat for priority species and the future productivity of the site may be considered in determining no net loss of ecological functions.
- c. The applicant/proponent must show that mining is dependent on a shoreline location, and that demand cannot reasonably be accommodated in operations outside shoreline jurisdiction. Information required to meet this criterion shall evaluate geologic factors such as the distribution and availability of mineral resources as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.
- d. Where a lawfully established mining operation has resulted in the creation of a lake(s) greater than 20 acres and such lake(s) is subject to the provisions of the shoreline management program and the Act, such lake(s) shall be given a resource shoreline area designation. Notwithstanding any other applicable regulations, such mining operations shall be permitted to continue and may be expanded subject to approval of a shoreline conditional use permit.
- e. Reclamation Plan.
 - i. A reclamation plan that complies with the format and detailed minimum standards of Chapter 78.44 RCW shall be included with any shoreline permit application for mining.
 - ii. A reclamation plan that is inconsistent with this program or the Act shall constitute sufficient grounds for denial of a shoreline permit; provided, that the applicant/proponent shall be given reasonable opportunity to revise the plan.
- f. Overburden.
 - i. Overburden or other mining spoil or non-putrescible solid wastes shall be disposed of in an appropriate manner to protect shoreline ecological functions and processes, other uses, and aesthetic values.
 - ii. Disposal of overburden or mining spoil on shorelines shall comply with landfill policies and regulations of WCC 23.90.100.
- g. Surface Oil, Coal Bed or Gas Drilling. As provided in the Act (RCW 90.58.160), surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca waterward from OHWM and on all lands within 1,000 feet landward therefrom. Coal bed drilling is also prohibited.
- B. Marine and Lake Shores.
 - a. Mining of, including but not limited to, sand, gravel, cobbles, or boulders from any marine or lake shore is prohibited.
 - b. Mining of quarry rock may be permitted as a conditional use; provided, that shore processes and resources are not adversely affected.

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B. Additional Standards for Rivers and Streams.

1. Mining waterward of the ordinary high-water mark of a river shall not be permitted unless:
 - a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and
 - b. The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.
 - ~~a-c.~~ The determinations required by this section shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).
 - d. In considering renewal, extension, or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, the County shall require compliance with this subsection to the extent that no such review has previously been conducted. Where there has been prior review, the County shall review previous determinations comparable to the requirements of this section to assure compliance with this section under current site conditions.
 - ~~b-e.~~ The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WCC 23.40.080 (Dredging and Dredge Material Disposal).
2. Mining within any designated channel migration zone (CMZ) may be approved as shall require a shoreline conditional use.
- ~~1-3.~~ Scalping of accretional point bars may be permitted as a shoreline conditional use for flood hazard reduction control purposes and or market demands commercial purposes under the following conditions:
 - a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole. Specific studies accompanying the application shall demonstrate that no adverse flood, erosion, or other environmental impacts occur either upstream or downstream of extraction sites. Mining extraction amounts, rates, timing, and locations shall be based on a scientifically determined sediment budget adjusted periodically according to data provided by a regular monitoring plan.
 - b. Aggregate washing and ponding of waste water are prohibited in floodways.
 - c. Storage within the FEMA floodway is prohibited in the shoreline during the flood season (November 1st through March 1st); provided, that temporary stockpiling is permitted during working hours if all such materials are removed from the floodway at the end of each day's operation.
 - d. All applicable permits and approvals, including, but not limited to, hydraulic project approval (HPA) from the Department of Fish and Wildlife and a Whatcom County flood permit, shall be obtained and all applicable provisions attached thereto shall be adhered to.

Comment [AP183]: Updated for consistency with WAC 173-26-241(3)(h).

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- e. ~~Open pit mining may be permitted in a floodplain, provided, that all of the following criteria are met:~~
- ~~i. All pits and other operations should be located outside of the channel migration zone.~~
 - ~~ii. All pits of each operation should be located and excavated to a depth so as to function as a self-flushing chain of lakes whenever the pits are overtopped by floods in order to prevent eutrophication and fish entrapment.~~
 - ~~iii. The entire operation should be sized and designed so that neither additional bank erosion, catastrophic changes in channel location, nor adverse impact to fish resources or water quality will likely result in the long term.~~
 - ~~iv. The scale and mode of operation will not have adverse impacts on fish resources, water quality, and recreation resources, nor adversely impact a stream's natural capacity to erode, shift, accrete, and/or flood.~~
 - ~~v. All equipment, works and structures are designed to withstand flooding without becoming a hazard in themselves nor causing adverse effects on shore features, without the necessity for shore stabilization structures.~~
 - ~~vi. All structures or equipment which are not flood proof shall be located outside of the 100-year floodplain during the flood season (November 1st through March 1st); provided, that such equipment is permitted during daily operations.~~

Comment [DN184]: Not specifically required by the WAC. Proposed for removal.

C. Regulations for Specific Shoreline Environment Designations

1. ~~In the Aquatic shoreline environment mining is prohibited, except that accretional bar scalping in streams may be permitted as a shoreline conditional use; provided, that upon approval by the County and Ecology of a sediment management plan component for a mutually designated reach of river, including incorporating the findings of a programmatic environmental impact statement, the shoreline conditional use requirement will no longer be in effect unless mutually agreed to in said management plan.~~

D. Shoreline Area Regulations:

Comment [CES185]: Moved from removed 'Shoreline Area Regulations.'

Comment [CES186]: Addressed in the use table now.

~~Urban. Mining is prohibited.~~

~~Urban Resort. Mining is prohibited.~~

~~Urban Conservancy. Mining is prohibited.~~

~~Shoreline Residential. Mining is prohibited.~~

~~Rural. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Resource. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Conservancy. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Natural. Mining is prohibited.~~

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1 ~~1. Aquatic Mining is prohibited, except that accretional bar scalping in streams may be permitted~~
2 ~~as a conditional use subject to policies and regulations of this program, provided, that upon~~
3 ~~approval by the county and Ecology of a sediment management plan component for a mutually~~
4 ~~designated reach of river, including incorporating the findings of a programmatic environmental~~
5 ~~impact statement, the conditional use requirement will no longer be in effect unless mutually~~
6 ~~agreed to in said management plan.~~

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~~23.410.130.150~~ **23.410.150 Moorage Structures—Docks, Piers and Mooring Buoys.**

~~A. Policies:~~

~~A. Moorage associated with a single-family residence is considered a water-dependent use; provided, that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water-related and water-enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed-use development or where it provides public access.~~

~~B. New moorage, excluding docks accessory to single-family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water-dependent or public access use.~~

~~C. As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats. Shared moorage facilities are preferred over single-user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two lots and new multifamily development of more than two dwelling units should provide shared moorage.~~

~~D. 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.~~

~~E. 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.~~

~~F. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of piers and docks should be no greater than that required for safety and practicality for the primary use.~~

~~G. 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.~~

~~H. 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.~~

~~I. Shoreline resources and water quality should be protected from overuse by boaters living on vessels (live-aboards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.~~

~~J. 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.~~

~~K. Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.~~

~~L. 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.~~

Comment [AP187]: Revised per Scoping Document, Items #11a and 11b and includes a general overhaul to include more specifications.

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B. Regulations.

A. General.

1. This section applies to all moorage structures. Marinas and boat launches are regulated pursuant to Moorage including docks, piers and mooring buoys in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. Shared moorage with more than four berths and Boat launching facilities are regulated under WCC 23.40.060+00.040, (Boating Facilities – Marinas and Launch Ramps).
2. No pier or dock shall be used for a residence.
3. Public access facilities shall be regulated pursuant to WCC 23.30.0760 (Public Access).
4. Commercial moorage shall be permitted only for water-dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water-dependent use.
5. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.
6. Moorage structures shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity:
 - a. Feeder bluffs and accretion shoreforms;
 - b. Marshes and other wetlands;
 - c. Kelp and eelgrass beds; and,
 - d. Areas of high energy or shallow sloping bottoms (<2% gradient) in the marine environment.
7. Moorage structures shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:
 - a. Estuaries;
 - b. Tidal pools on rock shores;
 - c. Spawning and holding areas for forage fish (such as herring, surf smelt and sandlance);
 - d. Subsistence, commercial and recreational shellfish beds; and
 - e. Other critical saltwater or freshwater habitats.
8. Other than for day use, all vessels mooring on waters of the state must obtain a lease or permission from the State Department of Natural Resources, except as allowed by applicable state regulations.
9. No moorage shall impact the rights of navigation or public access, unless mitigated.
10. When there is not a moorage structure, marine rails are permissible, but shall be supported with as few piles as practicable.

Comment [CES188]: Revised per Scoping Document, Item #8c. This language is carried over from an existing regulation in the Boating Facilities section of the SMP related to marinas and boat launches.

Comment [CES189]: Added per DOE recommendation.

B. Dimensional Standards – ~~Freshwater.~~

1. Freshwater – New overwater Moorage structures in freshwater environments may be permitted, subject to the following:

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	Design and Dimensional Standards
Maximum Area: surface coverage, including all attached float decking, platform lifts, covered moorage, ramps, ells, and fingers	<ul style="list-style-type: none"> • 480 sq. ft. for an individual use dock or pier • 700 sq. ft. for a shared moorage facility used by 2 residential property owners • 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners • Public and commercial moorage structures shall be limited to the minimum area needed to accommodate the intended use. • These area limitations shall include platform lifts • Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of 5 feet measured below ordinary high water mark, an additional 4 sq. ft. of area may be added for each additional foot of pier or dock length needed to reach 5 feet of water depth at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized.
Maximum Width	<ul style="list-style-type: none"> • For moorage structures accessory to a residential use: <ul style="list-style-type: none"> ◦ 4 feet for pier or dock walkway or ramp ◦ 6 feet for ells ◦ 2 feet for fingers ◦ 6 feet for float decking • Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated
Height	<ul style="list-style-type: none"> • Minimum of 1.5 feet above ordinary high water to bottom of pier stringers, except the floating section of a dock and float decking attached to a pier
Maximum Length <ul style="list-style-type: none"> ◦ Marine Rails ◦ Floats ◦ Overall Dock Length 	<ul style="list-style-type: none"> • 20 feet • 20 feet for float decking • Minimum necessary to obtain a moorage depth of 5.5 feet measured below ordinary high watermark at the waterward end of the dock.
Decking for piers, docks, walkways, platform lifts, ells, and fingers	<ul style="list-style-type: none"> • Floats 6 feet wide or less must have at least 30% of the deck surface covered in functional grating • Floats greater than 6 feet wide must have at least 50% of the deck surface covered in functional grating • All other dock components must have 100% of the deck surface covered in functional grating • The open area of functional grating must be at least 60% • Replacement of more than 33% or 250 sq. ft., whichever is greater, of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only

~~C. Dimensional Standards – Marine:~~

~~1-2. Marine – New overwater Moorage~~ structures in marine environments may be permitted, subject to the following: provided that port, industrial, and commercial piers and floats shall be the minimum area, length, and width necessary for the intended use:

	Design and Dimensional Standards
Maximum Area: surface coverage, including all components	<ul style="list-style-type: none"> • 480 sq. ft. for an individual use dock or pier • 700 sq. ft. for a shared moorage facility used by 2 residential property owners • 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners • Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock, an additional 4 sq. ft. of area may be added for

Comment [CES190]: Standards updated to meet the requirements of the Army Corps of Engineers' Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

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	each additional foot of pier or dock length needed to reach -9.5 feet mean low low water as measured at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized
Maximum Width	<ul style="list-style-type: none"> For moorage structures accessory to a residential use: <ul style="list-style-type: none"> 4 feet for pier or dock walkway or ramp 6 feet for ellis 2 feet for fingers 8 feet for float decking For a joint-use structure – 8 feet Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated
Height	<ul style="list-style-type: none"> Maximize height over the bed to improve light transmission The bottom of the pier must be at least six feet above the bed at the landward end
Maximum Length	<ul style="list-style-type: none"> Marine Rails – 20 feet Floats – 30 feet per user (e.g., single-user – 30 feet, 2-users – 60 feet, etc) Overall Dock Length – Minimum necessary to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock
Decking	<ul style="list-style-type: none"> Floats must have at least 50% of the deck surface covered in functional grating. Piers, stairs, ramps, and platform lifts must have 100% of the deck surface covered in functional grating Grating openings should be oriented lengthwise in the eastwest direction to the maximum extent practicable. Grating must not be covered (on the surface or underneath) with any items (e.g., kayaks, planters, sheds, lawn chairs, etc.) except utility boxes. Grating must be either multi-directional grating with a minimum of 40% open space or square grating with a minimum of 60% open space. Provide documentation to show amount of % open area. Replacement of more than 10% or 48 sq. ft. of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only

Comment [CES191]: Revised based on USACE standards.

C. Construction Standards for Overwater-Moorage Structures.

- Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use, and shall observe the following criteria:
- Piers and docks moorage structures shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions of a pier or dock, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Piers and docks in lakes providing a public water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.
- Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved for public projects only and only as a shoreline conditional use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.

Comment [AP192]: Added per Scoping Document, Item #5e. This provision is consistent with WAC requirements to require a CUP for any fill waterward of the OWHM.

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4. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.
5. Pile diameter shall be the minimum necessary and pile spacing shall be the maximum feasible to minimize shading and avoid a “wall” effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment. Piles supporting a new pier must be spaced no closer than 20 feet apart.
- 5-6. Offshore and foreshore pile structures shall allow for continuity of hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.
7. Flotation for the float shall be fully enclosed and contained in a shell (e.g., polystyrene tubs not shrink wrapped or sprayed coatings) that prevents breakup or loss of the flotation material into the water and is not readily subject to damage by ultraviolet radiation and/or abrasion caused by rubbing against piling and/or waterborne debris.
8. Flotation components shall be installed under the solid portions of the float, not under the grating.
9. If the project includes the replacement of existing piling, they should be either partially cut with a new piling secured directly on top, fully extracted, or cut 2 feet below the mudline. If treated piling are fully extracted or cut, the holes or piles must be capped with clean, appropriate material.
- 6-10. A maximum of two moorage pilings may be installed to accommodate the moorage of boats exceeding the length of the floats.
11. Overhead wiring or plumbing is not permitted on moorage structures.
12. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
13. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
14. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.
15. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems or approved marina-home developments.
16. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.
17. The width of landings, stairways, or steps must not exceed 4 feet for single-use and 6 feet for joint-use.
18. Additional standards for marine moorage structures:

Comment [CES193]: Updated to meet the requirements of the Army Corps of Engineers' Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

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- a. Floats may be held in place with lines anchored with a helical screw or “duckbill” embedded anchor, piles with stoppers and/or float support/stub piles. (1) For a single-user float, a maximum of 4 piles (not including stub piles) or embedded anchors may be installed. (2) For a joint-use float, a maximum of 8 piles (not including stub piles) or embedded anchors may be installed. (3) If embedded anchors need to be utilized, the anchor lines shall not rest on the substrate at any time; each must contain a mid-line float. (4) Only if the substrate prohibits use of piles or embedded anchors may a Corps-approved alternative be used. (5) If a concrete anchor or other Corps-approved alternative is needed to hold the float, calculations showing that it will hold without dragging or breaking during storm events are required. This analysis should include the size of the float and the dry weight and dimensions of the anchor.
 - b. If the float is positioned perpendicular to the ramp, a small access float may be installed to accommodate tidal movement of the ramp. The access float cannot be larger than 6 feet wide and 10 feet long.
 - c. No floats may be installed in the Upper Shore Zone (area landward of +5 MLLW).
 - d. Float Stops:
 - i. To suspend the float above the substrate at all tides, float stops should be installed on piles anchoring floats. This method is preferred over (d)(ii) and (d)(iii) because float stops are less impacting to the marine environment.
 - ii. If float stops attached to piles are not feasible (provide explanation) then up to four 10-inch diameter stub piles may be installed.
 - iii. Float “feet” attached to the float are an option if the substrate consists of coarse material as described in the column to the right
19. Additional standards for marine mooring buoys:
- a. Mooring buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.
 - b. The location (latitude/longitude) of the anchor for the buoy must be identified on the project drawings.
 - c. Anchor lines must not rest or drag on the substrate, and a midline float must be installed to prevent this.
 - d. Anchors should be helical screw or another type of embedded anchor. Only if the substrate prohibits use of embedded anchors may alternative anchors (i.e., concrete block) be used. If an embedded anchor cannot be used and a concrete anchor is needed, calculations showing that the anchor will hold without dragging or breaking during storm events is required. This analysis should include the size of the vessel and the dry weight and dimensions of the anchor.

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- e. No other moorage structures may be anchored within a 117-foot radius (with the proposed buoy in the center of the 117-foot radius circle, which would result in a concentration of no more than one per acre) of the proposed buoy.
- f. New mooring buoys may not be installed in any waterbody the Washington State Department of Health has designated as “threatened” or “closed” to shellfish harvesting due to the number of boats moored there.

Comment [CES194]: Added to meet the requirements of the Army Corps of Engineers’ Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

- D. Private recreational moorage for individual lots is permitted in existing subdivisions approved on or before January 28, 1993, only where shared moorage has not already been developed. Prior to development of a new dock for a single residential lot, the applicant/proponent shall demonstrate that:
 - E. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use;
 - F. On marine shorelines, alternative moorage, such as mooring buoys or a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy, are not adequate or feasible; and
 - G. The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.
 - H. If allowed, only one private dock shall be permitted on a shoreline residential lot.
 - I. Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:
 - J. Shared moorage shall be provided for all new residential developments of more than two dwelling units. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for shared moorage should be owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
 - K. Apportionment of construction and maintenance expenses;
 - L. Easements and liability agreements; and
 - M. Use restrictions.
 - N. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.
 - O. Where a multifamily residential development, camping club or subdivision development provides shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units.
 - P. Prior to issuing a permit for shared moorage, a proponent shall file with the Whatcom County auditor a legally enforceable joint use agreement that, at minimum, addresses the following:
 - Q. Apportionment of construction and maintenance expenses;
 - R. Easements and liability agreements; and

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~~S. Use restrictions.~~

~~T. Commercial docks shall be permitted only for water dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water dependent use.~~

~~U. Private moorage for float planes may be permitted as a conditional use where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use.~~

~~V. If allowed under the provisions of this program, only one private dock with one accessory float, one boat lift, and one covered moorage accessory to a permitted moorage, shall be permitted on a shoreline lot owned for residential or private recreational use.~~

~~W. Docks with or without a float shall be the minimum size required to provide for moorage. Single-family docks and floats shall not exceed 40 feet in length measured perpendicularly from the OHWM nor exceed three feet in height above the extreme high water level. Shared moorage may extend to 80 feet in length if demonstrated to be necessary to provide adequate moorage. In the case of pile docks at marine or river locations, the height shall be limited to that which may be reasonably necessary to accommodate landing and moorage of watercraft. Commercial docks shall be the minimum length necessary to serve the type of vessel served.~~

~~X. Private docks up to 60 feet in length or shared moorage up to 100 feet in length measured perpendicularly from the OHWM, including floats, may be permitted by the administrator in shallow areas where a dock sized to accommodate a tender to provide access to a mooring buoy is not feasible and where existing docks on adjacent properties presently extend out as far as that which is proposed, and where such added length is necessary in order to allow a reasonable use of the dock, as determined based upon adjacent uses; and where the extension in dock length will not adversely affect ecological processes and functions, provided the required dock length is the minimum necessary to achieve such purposes. Docks that cannot reasonably meet this standard may request a review under the variance provisions of this program.~~

~~Y. Moorage shall be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of d~~

~~Z. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:~~

~~AA. The width of piers, docks and floats shall be the minimum necessary and shall not exceed four feet in width, except where specific information on use patterns justifies a greater width. Marine floats shall not exceed eight feet in width nor 40 feet in length and freshwater floats shall not exceed six feet in width and 20 feet in length unless authorized by a variance. Exceptionally large vessels or vessels that require a relatively deep draft may be required to use a buoy, other alternative mooring scheme, or to moor in a marina. Materials that will allow light to pass through the deck may be required where width exceeds four feet.~~

~~BB. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.~~

~~CC. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.~~

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DD. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore); provided, that a shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

EE. Dock and Pier Design.

FF. Moorage buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.

GG. A covered moorage accessory to a single family pier or dock, not accessory to a marina, shall have no walls other than an open structural framework to support a roof and shall not cover more than 200 square feet nor exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50 percent clear skylights.

HH. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.

II. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems, or approved marina home developments.

JJ. If a dock is provided with railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surface.

KK. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.

LL. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.

MM. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.

NN. No pier or dock shall be used for a residence.

OO. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.

PP. Public access facilities shall be provided in accordance with policies and regulations in WCC 23.90.080.

D. Additional Standards for Individual-use docks and piers Moorage.

1. An individual use dock may consist of one pier, one float or platform lift, one boat lift, and one covered moorage.

2. When allowed under the provisions of this program, only one private dock shall be permitted as an accessory use to a primary use.

Comment [CES195]: Updated to meet current state and federal regs & guidance

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3. Private recreational moorage for individual lots is permitted in subdivisions approved on or before January 28, 1993, only where shared moorage has not already been developed.
4. Prior to development of a new dock for a single residential lot, the applicant/proponent shall demonstrate that:
 - a. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use;
 - b. Alternative moorage, such as mooring buoys or a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy, are not adequate or feasible; and
 - c. The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.
5. Private moorage for float planes may be permitted as a shoreline conditional use where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use.
6. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore).
- 4-7. Covered moorage accessory to a single-family pier or dock shall have no walls other than an open structural framework to support a roof and shall not cover more than 200 square feet nor exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50 percent clear skylights.
- E. Additional Standards for Shared Moorage.
 1. When allowed under the provisions of this program, a shared moorage dock may be permitted for multiple users. Such docks may consist of one pier and multiple floats or platform lifts, boat lifts, and covered moorages, not to exceed the number of authorized users nor the total maximum area allowed per WCC 23.40.140(B).
 2. Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:
 - a. Shared moorage shall be provided for all residential developments of more than two dwelling units.
 - b. Subdivisions shall contain a restriction on the face of the plat prohibiting individual docks.
 - c. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. A site for shared moorage should be owned in undivided interest by property owners within the subdivision.
 - d. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
 - i. Apportionment of construction and maintenance expenses;
 - ii. Easements and liability agreements; and
 - iii. Use restrictions.

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e. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.
f. Where a new multifamily residential, camping club, or subdivision development proposes to provide shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units. This provision does not apply to existing developments.

3. Shared moorage shall be limited to the amount of moorage needed to serve lots with water frontage; provided, that a limited number of upland lots may also be accommodated. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage currently leased or proposed to be leased to upland property owners shall be reviewed as a marina.

4. Shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

C. Shoreline Area Regulations

A. Urban. Private and shared moorage are permitted subject to policies and regulations of this program. Public, commercial and industrial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use.

B. Urban Resort. Private, shared and public moorage, and covered moorage or floatplane moorage accessory to a permitted moorage, may be permitted as a conditional use subject to the policies and regulations of this program. Commercial moorage is prohibited, except piers serving small passenger vessels may be permitted as a conditional use. Industrial moorage is prohibited.

C. Urban Conservancy. Private and shared moorage on non-marine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorage are prohibited.

D. Shoreline Residential. Private and shared moorage are permitted subject to policies and regulations of this program. Public and commercial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial moorage is prohibited.

E. Rural. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.

F. Resource. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing piers, and

Comment [CES196]: Addressed by use table now.

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- floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.
- G. ~~Conservancy. Private and shared moorage on nonmarine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorages are prohibited.~~
- H. ~~Natural. Moorage is prohibited, except public access, interpretive or nature observation facilities that are compatible with the area's physical and visual character may be conditionally permitted subject to policies and regulations of this program. Covered and floatplane moorage are prohibited.~~
- I. ~~Aquatic. Moorage is permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Unless authorized by WA DNR or its designees, extended moorage longer than 60 consecutive days in one location shall be considered an obstruction which interferes with the normal public use of the surface of the waters of the state, and is prohibited.~~
- 23.4100.140-160 Recreation.**
- ~~Shoreline recreation shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~
- A. ~~Policies.~~
- A. ~~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.~~
- B. ~~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.~~
- C. ~~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.~~
- D. ~~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.~~
- E. ~~Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.~~

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- 1 ~~F. Access to natural character recreational areas, including but not limited to beaches and fishing~~
2 ~~streams, should be a combination of linear shoreline trails or easements and small parking or access~~
3 ~~tracts to minimize user concentration on small portions of the shoreline.~~
- 4 ~~G. Recreation facilities should incorporate public education regarding shoreline ecological functions~~
5 ~~and processes, the role of human actions on the environment and the importance of public~~
6 ~~involvement in shorelines management. Opportunities incorporating educational and interpretive~~
7 ~~information should be pursued in design and operation of recreation facilities and nature trails.~~
- 8 ~~H. Reasonable physical or visual public access to shorelines should be provided and integrated with~~
9 ~~recreational developments in accordance with WCC 23.90.080.~~
- 10 ~~I. Recreation development should be located only where utility and road capability is adequate, or~~
11 ~~may be provided without significant damage to shore features commensurate with the number and~~
12 ~~concentration of anticipated users.~~
- 13 ~~J. Cooperative efforts among public and private persons toward the acquisition and/or development~~
14 ~~of suitable recreation sites or facilities should be explored to assure long-term availability of~~
15 ~~sufficient public sites to meet local recreation needs.~~
- 16 ~~B. Regulations. Where significant adverse impacts are adequately mitigated, recreational development~~
17 ~~is a priority use for shoreline location, subject to the following:~~
- 18 A. General.
- 19 1. Water-related and water-enjoyment uses ~~de-shall~~ not displace water-dependent uses ~~and are~~
20 ~~consistent with existing water-related and water-enjoyment uses.~~
- 21 2. Activities provided by recreational facilities must bear a substantial relationship to the shoreline,
22 or provide physical or visual access to the shoreline. Facilities for water-dependent recreation
23 such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such
24 as picnicking, hiking, and walking should be located near the shoreline, while non-water-related
25 recreation facilities shall be located inland.
- 26 3. Recreation areas or facilities ~~on the shoreline~~ shall provide physical or visual public access
27 consistent with the criteria of WCC 23.30.060 ~~90.080~~ (Public Access).
- 28 4. Recreational facilities with large grass areas, such as golf courses and playing fields, and facilities
29 with extensive impervious surfaces shall incorporate means to prevent erosion, control the
30 amount of runoff, and prevent harmful concentrations of chemicals and sediment from entering
31 waterbodies in accordance with the ~~policies and~~ regulations of WCC 23.390.0340 (Water Quality
32 and Quantity).
- 33 5. Recreational use of motor vehicles including unlicensed off-road vehicles is permitted only on
34 roads or trails specifically designated for such use. Such use is prohibited on tidelands,
35 backshore beaches, streams, or wetlands; except as necessary for public health and safety or
36 maintenance.
- 37 6. Trails shall meet the requirements of WCC Chapter 16.16 (Critical Areas).
- 38 B. Regulations for Specific Shoreline Environment Designations:
- 39 1. In the Urban Conservancy shoreline environment, low intensity water-oriented recreational use
40 and development is permitted subject to the following criteria:

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- a. Structures will not result in more than 10 percent building coverage or 4,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000 square feet, whichever is greater.
- b. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.
- c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.
2. In the Resource shoreline **environment**, low intensity water-oriented recreational use and development is permitted; provided, that no designated agricultural or forest resource lands of long-term significance are displaced.
3. In the Conservancy shoreline **environment**, low intensity water-oriented recreational use and development is permitted subject to the following criteria:
 - a. Structures on sites of one acre or less will not result in more than 10 percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent or 5,000 square feet, whichever is greater.
 - b. Structures on sites greater than one acre will not result in more than five percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 10 percent or 10,000 square feet, whichever is greater.
 - c. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.
 - d. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.
4. In the Natural shoreline **environment**, low intensity water-oriented recreational use and development consisting of primitive trails or primitive campsites is permitted subject to the following criteria:
 - a. Essential minor structures such as trails, stairs, small picnic areas, primitive roads, viewpoints, restrooms, interpretive facilities, or development that will not adversely affect shoreline ecological functions and processes are permitted.
 - b. Any necessary landscaping shall use native or similar self-maintaining vegetation.
 - c. Recreational development requiring extensive structures or substantial alterations to topography or native vegetation is prohibited.
5. In the Aquatic shoreline **area environment**, water-oriented recreational use and development is permitted, subject to the use and development regulations of the abutting upland shoreline **area environment** designation; provided, that underwater parks may be permitted as a shoreline conditional use.
- A. Shoreline Area Regulations:
 1. Urban: Water-oriented recreational use and development is permitted subject to policies and regulations of this program.
 2. Urban Resort: Water-oriented recreational use and development is permitted subject to policies and regulations of this program.

Comment [AP197]: Carried over from removed 'Shoreline Area Regulations.'

Comment [CES198]: Addressed in use table now

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- 1 ~~3. Urban Conservancy. Low intensity water-oriented recreational use and development is~~
2 ~~permitted subject to policies and regulations of this program and the following criteria:~~
 - 3 ~~a. Structures will not result in more than 10 percent building coverage or 4,000 square feet,~~
4 ~~whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000~~
5 ~~square feet, whichever is greater.~~
 - 6 ~~b. Alteration of topography shall be limited to the minimum necessary to accommodate~~
7 ~~allowed development, and generally less than 30 inches.~~
 - 8 ~~c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline~~
9 ~~ecological functions.~~
- 10 ~~4. Shoreline Residential. Water-oriented recreational use and development is permitted subject to~~
11 ~~policies and regulations of this program.~~
- 12 ~~5. Rural. Water-oriented recreational use and development is permitted subject to policies and~~
13 ~~regulations of this program.~~
- 14 ~~6. Resource. Low intensity water-oriented recreational use and development is permitted subject~~
15 ~~to policies and regulations of this program; provided, that no designated agricultural or forest~~
16 ~~resource lands of long-term significance are displaced.~~
- 17 ~~7. Conservancy. Low intensity water-oriented recreational use and development is permitted~~
18 ~~subject to policies and regulations of this program and the following criteria:~~
 - 19 ~~a. Structures on sites of one acre or less will not result in more than 10 percent building~~
20 ~~coverage or 2,000 square feet, whichever is greater, and total impervious surface will not~~
21 ~~exceed 20 percent or 5,000 square feet, whichever is greater.~~
 - 22 ~~b. Structures on sites greater than one acre will not result in more than five percent building~~
23 ~~coverage or 2,000 square feet, whichever is greater, and total impervious surface will not~~
24 ~~exceed 10 percent or 10,000 square feet, whichever is greater.~~
 - 25 ~~c. Alteration of topography shall be limited to the minimum necessary to accommodate~~
26 ~~allowed development, and generally less than 30 inches.~~
 - 27 ~~d. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline~~
28 ~~ecological functions.~~
- 29 ~~8. Natural. Low intensity water-oriented recreational use and development consisting of primitive~~
30 ~~trails or primitive campsites is permitted subject to policies and regulations of this program and~~
31 ~~the following criteria:~~
 - 32 ~~a. Essential minor structures such as trails, stairs, small picnic areas, primitive roads,~~
33 ~~viewpoints, restrooms, interpretive facilities, or development that will not adversely affect~~
34 ~~shoreline ecological functions and processes are permitted, subject to policies and~~
35 ~~regulations of this program.~~
 - 36 ~~b. Any necessary landscaping shall use native or similar self-maintaining vegetation.~~
 - 37 ~~c. Recreational development requiring extensive structures or substantial alterations to~~
38 ~~topography or native vegetation is prohibited.~~
- 39 ~~9. Aquatic. Water-oriented recreational use and development is permitted, subject to the use and~~
40 ~~development regulations of the abutting upland shoreline area designation; provided, that~~
41 ~~underwater parks may be permitted as a conditional use.~~

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~~23.410.150-170~~ Residential.

~~Residential development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. This section applies to residential development, uses, and activities, as defined in WCC Chapter 23.110 includes multifamily development and the creation of new residential lots through land division is regulated pursuant to WCC 23.40.130 (Land Division).~~

~~B. Policies.~~

~~A. 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.~~

~~B. 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.~~

~~C. 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.~~

~~D. 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.~~

~~E. Buildings greater than 35 feet above average grade level that will obstruct the views of a substantial number of residences on areas adjoining such shorelines are limited by the Act (RCW 90.58.320) to those cases where this program does not prohibit such development and then only when overriding considerations of the public interest will be served. This program provides opportunities for buildings greater than 35 feet in height in limited areas where consistent with development objectives and the goals and policies of this program.~~

~~F. New residential development should be planned and built in accordance with the policies and regulations in WCC 23.90.030 and to minimize the need for shoreline stabilization and flood hazard reduction measures.~~

~~G. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or nonnative vegetation.~~

~~H. Whenever possible, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.~~

~~I. New multiunit residential development, including subdivision of land for more than four parcels, should provide substantial shore space for development residents and the public, unless public~~

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- access is infeasible due to incompatible uses, safety, impacts to shoreline ecology or legal limitations.
- ~~J. Development should provide open space corridors between structures, and along site boundaries, so as to provide space for outdoor recreation, preserve views, and minimize use conflicts.~~
- ~~K. Recreation-oriented residential development in the shoreline should be located only where substantial recreation opportunities are provided on-site, and where nearby property owners and other appropriate uses will not be adversely affected.~~
- ~~C. Regulations.~~
- ~~A. General.~~
- ~~1. New or~~ Over-water residential structures, including floating homes, are prohibited.
- ~~2. New or~~ Residential development may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.
- ~~3. New or~~ Residential development shall assure through a geotechnical analysis that the development will not require shoreline stabilization for the life of structure (100 years). Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary; setbacks from steep slopes, bluffs, landslide hazard areas, seismic hazard areas, riparian and marine shoreline erosion areas shall be sufficient to protect structures during the life of the structure (100 years); and impacts to adjacent, downslope or down-current properties are not likely to occur. The greater setback resulting from this regulation or WCC ~~23.90.130~~ 23.40.020 (Shoreline Bulk Provisions) shall apply.
- ~~2. Clustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.~~
- ~~4. Residential structures, accessory uses, and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and waterbodies.~~
- ~~5. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.~~
- ~~B. Standards for Single-Family Residential Use on Constrained Lots.~~
- ~~1. Legally existing lots with a depth (the distance from the ordinary high water mark to the inside edge of the frontage setback) that would not allow for compliance with the reduced standard buffer may be allowed without a shoreline variance when the following criteria are met:~~
- ~~2. The lot is vacant or existing structures are removed; provided an existing primary single family residential structure may be enlarged, consistent to WCC 23.50.020, to the maximum building area allowed in (3) below.~~
- ~~3. The building area lying landward of the shoreline buffer and interior to required side yard setbacks is shall not exceed 2,500 square feet or less. The building area means the entire area that will be disturbed to construct the home, sidewalks and similar structures (except the single path allowed for shoreline access), parking areas, normal appurtenances (except drainfields). Additionally, and another 500 square feet of low-impact development (LID) landscaping.~~

Comment [CES199]: Moved to land division

Comment [CES200]: Moved from Site Planning section. Required to meet WAC 173-26-241(3)(I).

Comment [CES201]: Moved from old nonconforming section.

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including any lawn, turf, ornamental vegetation, or gardens is allowed, provided that it is set back as far as feasible from the shoreline.

4. Consideration shall be given to view impacts in accordance with WCC 23.40.020(D)(2) (Common-Line Setback).

~~2.5.~~ The lot is not subject to landslide hazard areas, ~~alluvial fan hazard areas~~, or riverine and coastal erosion hazard areas or associated buffers ~~as defined in (see WCC 16.16.310)~~;

~~3.6.~~ The nonconforming lot was created prior to the effective date of this program (August 8, 2008);

~~7.~~ Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas and their buffers, and provided, that;

~~8.~~ All ~~administrative~~ reductions to side yard and/or frontage setbacks are pursued, when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20.

~~4.9.~~ There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;

10. The shoreline jurisdiction shoreline area outside of the approved development is optimized to provide the maximum shoreline ecological functions and ecosystem wide functions;

11. Development may not take place waterward of the ordinary high water mark; and

12. Accessory utilities Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, subject to specific criteria in Chapter 16.16 WCC.

C. Additional Standards for Multifamily Residential Development.

~~1. Due to the potential for adverse impact upon adjacent uses and the community from such high-rise and multiunit buildings that exceed 35 feet in height, the County must find proposals for such buildings to be consistent with this program and the Act, particularly as related to RCW 90.58.320, and the following factors:~~

~~2.1.~~ Open space areas and setbacks shall be required along shorelines and between buildings ~~wherever feasible~~. These areas should be large enough so that ~~local~~ views are not extensively blocked, and building residents have privacy and ample space for outdoor recreation and circulation. The amount of open space shall increase proportionately as density and/or height increase. In general, a view corridor must be maintained across 30 percent of the average parcel width with additional width provided for the percentage increase above 35 feet to a maximum of 50 percent of the lot width. The increased area within a view corridor due to increased height must be devoted to landscaping or other open space.

~~3. Urban services, including sanitary sewers, public water supply, fire protection, stormwater drainage, and police protection shall be provided at adequate levels to protect the public health, safety, and welfare.~~

~~4.2.~~ Circulation, parking areas, and outdoor storage or loading areas shall be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas shall be screened where appropriate from open space areas by landscaping, fences or other similar structures, or grade separation.

Comment [CES202]: Already addressed by 23.40.020(C)(2)

Comment [CES203]: Covered by Title 20.

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3. ~~New multiunit~~ ~~m~~Multifamily development ~~with more than four units and, including subdivision of land for more than four parcels,~~ shall incorporate public access to ~~publicly owned shorelines or public waterbodies~~ ~~waters of the state~~ as provided for in WCC 23.390.0780 (Public Access) unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. ~~The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:~~

- a. ~~Multifamily development that have views of water areas shall provide a public pedestrian viewing area.~~
- b. ~~Multifamily development adjacent to waters of the state shall provide access to a point abutting the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.~~
- c. ~~Multifamily development subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.~~

Comment [CES204]: Mimicking the public access requirements for land divisions.

5-4. Recreational needs of building residents shall be provided through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases. ~~Where appropriate, public access should be provided and integrated with the development.~~

A. ~~Location and Design.~~

1. ~~As mandated by the Act (RCW 90.58.320), no shoreline permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~
2. ~~Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.~~

Comment [CES205]: Deleted throughout, as every use has to meet the general setbacks.

B.D. ~~Additional Standards for Accessory Uses and Development.~~

1. ~~Accessory development common to residences includes, but is not limited to, recreational moorage (mooring buoys, docks and floats), garages and shops, parking areas, water-craft storage, shoreline stabilization, fences, cabanas, tennis courts, swimming pools, saunas, antennas, decks, walkways and landscaping.~~
2. ~~Shoreline permits shall be required for accessory development that does not meet the intent and definition of an appurtenance as defined in WCC 23.110.010(16).~~
1. ~~Such Non-water dependent accessory uses development shall not be located~~ ~~are prohibited~~ in required shoreline setbacks; ~~except, as provided in WCC Chapter 16.16 (Critical Areas).~~

Comment [DN206]: Deleted, as this is a definition and is covered there.

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~~3.2. Non-water dependent development uses and shall be prohibited over the water, unless clearly water-dependent such as moorage (mooring buoys, docks and floats) for recreational or personal use.~~

~~4. For projects involving two or more dwelling units, only shared moorage consisting of mooring buoys, or shared moorage and/or floats, is permitted. Individual private docks are prohibited. Shared moorage may be approved if it meets all requirements in WCC 23.100.090.~~

~~5.3. Private recreational docks and floats for individual lots are permitted in existing subdivisions which were approved on or before January 28, 1993, only where shared moorage has not already been developed and subject to the policies and regulations in WCC 23.100.090. For docks and piers, see WCC 23.40.150 (Moorage Structures).~~

E. Regulations for Specific Shoreline Environment Designations.

1. ~~In the Natural shoreline environment, residential development is prohibited, except that one single-family residence per legal lot may be permitted as a shoreline conditional use where there is no feasible location outside of the shoreline.~~

D. Shoreline Area Regulations.

- ~~A. Urban. Residential development is permitted subject to policies and regulations of this program.~~
- ~~B. Urban Resort. Residential development is permitted subject to policies and regulations of this program.~~
- ~~C. Urban Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~
- ~~D. Shoreline Residential. Residential development is permitted subject to policies and regulations of this program.~~
- ~~E. Rural. Residential development is permitted subject to policies and regulations of this program.~~
- ~~F. Resource. Residential development limited to farm related residences or one residence and one accessory dwelling unit is permitted per existing parcel where there is no feasible location outside of the shoreline.~~
- ~~G. Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~
- ~~H. Natural. Residential development is prohibited, except that one single family residence per existing lot of record may be permitted as a conditional use where there is no feasible location outside of the shoreline.~~
- ~~I. Aquatic. Residential development is prohibited.~~

Comment [AP207]: Moved from 'Shoreline Area Regulations.'

Comment [CES208]: Addressed in use table now.

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23.4100.160-180 Restoration and Enhancement.

~~e. Restoration in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies:~~

- ~~1. This program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.~~
- ~~2. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species as well as the biological recovery goals for early Chinook and bull trout populations, and other salmonid species and populations.~~
- ~~3. Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.~~
- ~~4. Priority should be given to restoration actions that:~~
 - ~~2. Create dynamic and sustainable ecosystems.~~
 - ~~3. Restore connectivity between stream/river channels, floodplains and hyporheic zones.~~
 - ~~4. Restore natural channel forming geomorphologic processes.~~
 - ~~5. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.~~
 - ~~6. Reduce sediment input to streams and rivers and associated impacts.~~
 - ~~7. Improve water quality.~~
 - ~~8. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.~~
 - ~~9. Replant native vegetation in riparian areas to restore functions.~~
 - ~~10. Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.~~
 - ~~11. Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.~~
 - ~~12. Address contamination along industrial shoreline regions.~~

~~A. Regulations- General:~~

- ~~1. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed, and implemented in accordance with applicable policies and regulations of this program.~~
- ~~2. Restoration shall be carried out in accordance with an approved shoreline restoration plan, County Resolution 2007-011, and in accordance with the policies and regulations of this program.~~
- ~~3. The County may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.~~

~~1. Shoreline Area Regulations:~~

- ~~a. Urban- Restoration activities are permitted subject to policies and regulations of this program.~~

Comment [DN209]: Moved from General Regulations section (WCC 23.30)

Comment [AP210]: Added per Periodic Review Checklist, Item 2009.a, and Scoping Document, Item #2f.

Comment [CES211]: Addressed in use table now.

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- b. ~~Urban Resort. Restoration activities are permitted subject to policies and regulations of this program.~~
- c. ~~Urban Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- d. ~~Shoreline Residential. Restoration activities are permitted subject to policies and regulations of this program.~~
- e. ~~Rural. Restoration activities are permitted subject to policies and regulations of this program.~~
- f. ~~Resource. Restoration activities are permitted subject to policies and regulations of this program.~~
- g. ~~Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- h. ~~Natural. Restoration activities are permitted subject to policies and regulations of this program.~~
- i. ~~Aquatic. Restoration activities are permitted subject to policies and regulations of this program.~~

23.410.170-190 Shoreline Stabilization.

A. General.

1. All development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
2. Shoreline stabilization measures shall comply with the principals and standards of WAC 173-26-231(3)(a) (Shoreline Stabilization).
3. Shoreline stabilization structures shall not result in a net loss of shoreline ecological functions. If shoreline stabilization is necessary pursuant to a geotechnical analysis, the method, either hard or soft, may be required to provide mitigation.
4. When authorized consistent with these provisions, shoreline stabilization measures shall be designed in accordance with WDFW's Integrated Streambank Protection Guidelines or WDFW's Marine Shoreline Design Guidelines, whichever is relevant to the particular environment.
- 1.5. Alternatives for shoreline stabilization shall be based on the following order of preference:
 - a. No action, increase building setbacks, ~~relocate structures~~;
 - a.b. Nonstructural shoreline stabliaztion;
 - b.c. Other sSoft shoreline stabilization treatment;
 - d. Hybrid shoreline stabilization;
 - e. Hard shoreline stabilization.
6. Soft shoreline stabilization treatment shall be used unless demonstrated through a geotechnical analysis not to be sufficient to protect primary structures, dwellings, or businesses.
7. Hard shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
 - a. To protect legally existing primary structures:
 - i. New or enlarged structural shoreline stabilization measures for the existing primary structure, including residences and their primary appurtenant structures or uses, shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the lawfully established, primary structure will be damaged within three

Comment [CES212]: Added per DOE recommendation.

Comment [CES213]: Added per DOE recommendation.

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- years from shoreline erosion caused by tidal actions, currents, or waves. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using soft treatment.
- ii. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.
- b. In support of water-dependent development when all of the following apply:
- i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage;
- ii. Nonstructural shoreline stabilization, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient;
- iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report;
- c. In support of non-water-dependent development, including single-family residences, when all of the following apply:
- i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage;
- ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;
- iii. The need to protect the primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents and waves;
- d. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or sufficient.
8. When hard shoreline stabilization measures are demonstrated to be necessary, they must:
- a. Limit the size of stabilization measures to the minimum necessary; and
- b. Assure no net loss of shoreline ecological functions; and
9. Publicly financed or subsidized shoreline erosion control measures shall provide 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.
10. Bioengineering approaches or other soft treatment shoreline stabilization that provide restoration of shoreline ecological functions may be permitted waterward of the OHWM.
11. Shoreline stabilization on streams should be located and designed to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches. Hard shoreline stabilization methods are prohibited 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.

Comment [CES214]: Amended to comply with WAC 173-26-231(3)(a)(iii)(E).

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12. Revetments are prohibited, except for use in water-dependant and public infrastructure projects, which may be permitted as conditional use.
13. Gabions are prohibited along marine shorelines, but may be permitted as a conditional use along freshwater shorelines.
14. Shore stabilization should not be developed for the purpose of filling shorelines. Shoreline stabilization measures shall not be for the purpose of creating dry land, leveling or extending property, creating or preserving residential lawns, yards, or landscaping, and shall not be allowed except when otherwise allowed in this program.
15. Minimize disturbance pertaining to beach access by avoiding trails that require hard stabilization.
- ~~16. Bluff stabilization walls shall be prohibited unless proven necessary through a geotechnical report.~~
16. Placement of shoreline stabilization methods shall follow the natural contour of the existing shoreline, be parallel to and at or above the OHWM.
17. When determined to be necessary pursuant to this section Bulkheads and other similar hard structures are shoreline stabilization prohibited on marine feeder bluffs or on marine or lake accretion shoreforms, shall require a except as a conditional use permit where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.
- a. Shoreline stabilization on marine feeder bluffs may require additional mitigation measures, including those necessary to offset the loss of sediment supply.
- b. Shoreline stabilization on accretion shoreforms shall be set back a minimum of 20 feet landward from the OHWM.
18. Shoreline stabilization must be designed by a professional engineer licensed in the state of Washington with demonstrated experience in hydraulic activities of shorelines. Alternatively, soft treatment shoreline stabilization may be designed by a habitat biologist or a professional with demonstrated expertise in designing soft treatment shoreline stabilization.
19. Depending on the degree of hard or soft elements to the project, the County, WDFW, and/or U.S. Army Corps of Engineers may require varying degrees of mitigation or other permit conditions.
20. Shoreline stabilization, as applied in this section, is generally distinguished from shoreline restoration activities. However, specific shoreline stabilization elements of restoration activities shall be guided by this section.
21. Use of shoreline armoring to protect a lot where no primary structure presently exists shall be prohibited.
22. Shoreline stabilization structures shall not be constructed with waste materials such as demolition debris, derelict vessels, tires, concrete or any other materials which might have adverse toxic or visual impacts on shoreline areas.

Comment [CES215]: Deleted since all stabilization requires a geotech report.

Comment [CES216]: Moved from below and modified based on discussion w/ DOE.

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B. Additional Standards for Replacement or Repair of Existing Shoreline Stabilization.

1. Damaged structural stabilization may be repaired up to 50% of the linear length within a 5-year period. Repair area that exceeds 50% shall be considered a replacement. Stabilization repair applications shall consider cumulative approvals of each successive application within a five-year period.
2. Any replacement of, additions to, or increases in the dimensions of existing shoreline stabilization measures shall be considered as a new structure.
3. An existing stabilization structure may be replaced with a similar structure if there is a demonstrated need, through a geotechnical report, to protect principal uses or structures from erosion caused by currents, tidal action or waves.
4. If the OHWM has been re-established, the replacement structure must be located at or near the new OHWM.
5. Alternative or soft treatment stabilization shall be considered prior to in-kind replacement through an alternatives analysis.
6. The replacement structure shall:
 - a. Be designed, located, sized and constructed to assure no net loss of ecological functions.
 - b. Perform the same stabilization function of the existing structure and not require additions to or increases in size.
 - c. Not encroach waterward of the OHWM or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
7. When possible or as an element of mitigation sequencing, failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural or soft and/or long-term stabilization measures.

C. Supplemental Application Materials Requirements.

- 2.1. Geotechnical reports required pursuant to this section shall address the need for shoreline stabilization and shall include the following:
 - a. A scaled site plan showing:
 - i. The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicating distances to the OHWM; and
 - ii. Existing site topography, preferably with two-foot contours.
 - b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which stream processes, lake or marine geomorphic processes affect the site, including, but not limited to:
 - i. Soil erosion, deposition, or accretion;
 - ii. Evidence of past or potential channel migration;
 - iii. Evidence of past or potential erosion due to tidal action and/or waves;
 - iv. Littoral drift; and
 - v. An estimate of shoreline erosion rates.

Comment [CES217]: DOE recommended we have a threshold to distinguish between repair & replacement. How much has to be left to be considered repair? Language from SMP Handbook chapter 15, pg. 35-36.

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- c. A description and analysis of the urgency and risk associated with the specific site characteristics, an alternative analysis addressing the order of preference as specified in subsection (A)(4), and demonstrated need as specified in subsection (A)(7).
- d. A discussion and analysis demonstrating conformance with the standards enumerated in WCC Chapter 16.16 (Critical Areas).

Comment [CES218]: Added at DOE's recommendation.

D. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline environments, breakwaters and jetties may be permitted as a shoreline conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.
2. In the Natural shoreline area environment, shoreline stabilization is prohibited; except that using bioengineering approaches may be permitted when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
3. In the Aquatic shoreline environment:
 - a. Bioengineering approaches are permitted on tidelands and shorelands when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
 - b. Drift sills, breakwaters, and jetties may be permitted as a shoreline conditional use if such development is permitted in the abutting upland shoreline environment designation.
 - c. Bulkheads or revetments are prohibited except for an approved water-dependent development.

Comment [AP219]: Moved from 'Shoreline Area Regulations.'

Shore stabilization in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.

A. Policies.

1. Alternatives to structures for shore protection should be used whenever possible. Such alternatives may include no action (allow the shoreline to retreat naturally), increased building setbacks, building relocation, drainage controls, and bioengineering, including vegetative stabilization, and beach nourishment.
2. New or expanded structural shore stabilization for new primary structures should be avoided. Instead, structures should be located and designed to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots will not require structural shore stabilization for reasonable development to occur.
3. New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.
4. New or expanded structural shore stabilization for enhancement, restoration, or hazardous substance remediation projects should only be allowed when nonstructural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve enhancement, restoration or remediation objectives.

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- 1 ~~5. Shore stabilization on streams should be located and designed to fit the physical character and~~
2 ~~hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent~~
3 ~~reaches.~~
- 4 ~~6. Shore stabilization should not be permitted to unnecessarily interfere with public access to public~~
5 ~~shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation,~~
6 ~~seafood harvest, or private recreation.~~
- 7 ~~7. Provisions for multiple use, restoration, and/or public shore access should be incorporated into the~~
8 ~~location, design and maintenance of shore stabilization for public or quasi-public developments~~
9 ~~whenever safely compatible with the primary purpose. Shore stabilization on publicly-owned~~
10 ~~shorelines should not be allowed to decrease long-term public use of the shoreline.~~
- 11 ~~8. Shore stabilization should be developed in a coordinated manner among affected property owners~~
12 ~~and public agencies for a whole drift sector (net shore drift cell) or reach where feasible, particularly~~
13 ~~those that cross jurisdictional boundaries, to address ecological and geohydraulic processes,~~
14 ~~sediment conveyance and beach management issues. Where beach erosion threatens existing~~
15 ~~development, a comprehensive program for shoreline management should be established.~~
- 16 ~~9. In addition to conformance with the regulations in this section, nonregulatory methods to protect,~~
17 ~~enhance, and restore shoreline ecological functions and other shoreline resources should be~~
18 ~~encouraged for shore stabilization. Nonregulatory methods may include public facility and resource~~
19 ~~planning, technical assistance, education, voluntary enhancement and restoration projects, or other~~
20 ~~incentive programs.~~
- 21 ~~10. Shore stabilization should be located, designed, and maintained to protect and maintain shoreline~~
22 ~~ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream,~~
23 ~~lake or marine processes and the probable effects of proposed shore stabilization on other~~
24 ~~properties and shore features should be considered. Shore stabilization should not be developed for~~
25 ~~the purpose of filling shorelines.~~
- 26 ~~11. Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological~~
27 ~~functions and processes should be restored using nonstructural methods or less harmful long-term~~
28 ~~stabilization measures.~~
- 29 ~~12. Structural shoreline stabilization measures should only be used when more natural, flexible,~~
30 ~~nonstructural methods such as vegetative stabilization, beach nourishment and bioengineering have~~
31 ~~been determined infeasible. Alternatives for shoreline stabilization should be based on the following~~
32 ~~hierarchy of preference:~~
 - 33 ~~a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate~~
34 ~~structures.~~
 - 35 ~~b. Flexible defense works constructed of natural materials including soft shore protection,~~
36 ~~bioengineering, including beach nourishment, protective berms, or vegetative stabilization.~~
 - 37 ~~c. Rigid works constructed of artificial materials such as riprap or concrete.~~
- 38 ~~Materials used for construction of shoreline stabilization should be selected for long-term durability,~~
39 ~~ease of maintenance, compatibility with local shore features, including aesthetic values and~~
40 ~~flexibility for future uses.~~

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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.
 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.
- B. Regulations.
1. Allowed Use.
 - a. New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
 - b. New shore stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore protection, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water-dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.
 - c. Shoreline stabilization is prohibited for new non-water-oriented development; provided, that such stabilization may be approved as a conditional use where a geotechnical analysis demonstrates that shore stabilization is necessary to facilitate reasonable use of a property and documents that alternative solutions, including location outside of the shoreline, are not feasible or do not provide sufficient protection, and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.
 - d. Where shore stabilization is allowed, it shall consist of "soft," flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.
 - e. Replacement of an existing shore stabilization structure with a similar structure is permitted if there is a demonstrated need to protect primary uses, structures or public facilities including roads, bridges, railways, and utility systems from erosion caused by stream undercutting or tidal action; provided, that the existing shore stabilization structure is removed from the shoreline as part of the replacement activity. A geotechnical analysis may be required to document that alternative solutions such as those listed in subsections (A)(12)(a) and (b) of this section are not feasible or do not provide sufficient protection.

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- Existing shoreline stabilization structures that are being replaced shall be removed from the shoreline unless removal of such structures will cause significant damage to shoreline ecological functions or processes. Replacement walls, bulkheads or revetments shall not encroach waterward of the ordinary high water mark or the existing shore defense structure unless the primary use being protected is a residence that was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- f. Groins are prohibited except as a component of a professionally designed community or public beach management program that encompasses an entire drift sector or reach for which alternatives are infeasible, or where installed to protect or restore shoreline ecological functions or processes.
- g. Jetties and breakwaters are prohibited except as an integral component of a professionally designed harbor, marina, or port. Where permitted, floating, portable or submerged breakwater structures, or smaller discontinuous structures, are preferred where physical conditions make such alternatives with less impact feasible. Defense works that substantially reduce or block littoral drift and cause erosion of downdrift shores, shall not be allowed unless an adequate long-term professionally engineered beach nourishment program is established and maintained.
- h. New or expanded shore stabilization may be permitted to protect projects with the primary purpose of enhancing or restoring ecological functions, or projects for hazardous substance remediation pursuant to Chapter 70.105D RCW when nonstructural approaches, such as vegetation planting, and/or on-site drainage improvements are not feasible or do not provide sufficient protection.
- i. Proposed designs for new or expanded shore stabilization shall be designed and certified by a qualified professional.
- j. No motor vehicles, appliances, other similar structures nor parts thereof, nor structure demolition debris, nor any other solid waste shall be used for shore stabilization.
- k. The size of shore stabilization measures shall be limited to the minimum necessary to provide protection for the primary structure or use it is intended to protect.
2. Marine Shorelines and Lakes. In those limited cases where a proposed bulkhead meets the criteria in this section for a shoreline permit or the exemption criteria under WCC 23.60.022, and to assure that such bulkheads will be consistent with the provisions of this program, the administrator shall review the proposed design as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this program, subject to the following:
- a. ~~Bulkheads and other similar hard structures are prohibited on marine or lake accretion shoreforms, except as a conditional use where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.~~
- b. Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided, that such structures may be

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permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.

Comment [CES220]: Moved above.

c. Bulkheads and other similar hard structures shall be located within one foot of the bank toe, and shall generally parallel the shoreline.

d. Bulkheads and other similar hard structures shall be designed and constructed with gravel backfill and weep holes so that natural downward movement of surface or ground water may continue without ponding or saturation.

e. Bulkheads exposed to significant wave action shall be designed to dissipate wave energy and scouring.

f. Walls, revetments or other similar hard structures within 10 feet of the OHWM shall be considered bulkheads; provided, that on accretion shoreforms walls or revetments or other similar hard structures within 20 feet of the OHWM shall be considered bulkheads.

3. Shore Stabilization on Streams. In those limited cases where a proposed bulkhead, revetment or other similar structure meets the criteria in this section for a shoreline permit or an exemption under WCC 23.60.022, and to assure that such revetment or similar structure will be consistent with this program, the administrator shall review the proposed design for consistency with state guidelines for stream bank protection as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this program, subject to the following:

a. Revetments or similar hard structures are prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.

b. Revetments or similar hard structures shall be placed landward of associated wetlands unless it can be demonstrated that placement waterward of such features would not adversely affect ecological functions.

c. A geotechnical analysis of stream geomorphology both upstream and downstream shall be performed to assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down, and assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources. In addition:

i. Revetments or similar structures shall not be developed on the low, innermost channel banks in a stream except to protect public works, railways and existing commercial farmsteads.

ii. Where revetments or similar structures are proposed, analysis shall assure that localized shore stabilization will be effective, as compared to more extensive cooperative measures to address reach scale processes. Revetments shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration should be given to their relocation.

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- 1 iii. ~~Revetments shall be designed in accordance with WDFW streambank protection~~
- 2 ~~guidelines.~~
- 3 d. ~~Cut and fill slopes and backfilled areas shall be stabilized with brush matting and buffer~~
- 4 ~~strips and revegetated with native grasses, shrubs and/or trees so that there is no net loss of~~
- 5 ~~ecological functions.~~
- 6 e. ~~All forms of shore stabilization shall be constructed and maintained in a manner that does~~
- 7 ~~not degrade the quality of affected waters. The county may require reasonable conditions to~~
- 8 ~~achieve this objective such as setbacks, buffers, or storage basins.~~
- 9 f. ~~Shore stabilization shall allow for normal ground water movement and surface runoff.~~
- 10 g. ~~Selection of materials for projects shall be in conformance with applicable engineering~~
- 11 ~~standards.~~
- 12 4. ~~Viewpoints and Public Access.~~
- 13 a. ~~Where appropriate, larger public or private shore stabilization projects shall be required to~~
- 14 ~~maintain, replace or enhance existing public access opportunities by incorporating physical~~
- 15 ~~or visual access areas and/or facilities into the design of the project.~~
- 16 b. ~~Publicly financed or subsidized shoreline stabilization shall not restrict appropriate public~~
- 17 ~~access to the shoreline and shall provide new public access except where such access is~~
- 18 ~~determined to be infeasible because of incompatible uses, safety, security, or harm to~~
- 19 ~~shoreline ecological functions.~~
- 20 5. ~~Application Materials. Geotechnical reports required pursuant to this section shall address the~~
- 21 ~~need for shoreline stabilization and shall include the following:~~
- 22 a. ~~A scaled site plan showing:~~
- 23 i. ~~The location of existing and proposed shore stabilization, structures, fill, and vegetation,~~
- 24 ~~with dimensions indicating distances to the OHWM; and~~
- 25 ii. ~~Existing site topography, preferably with two-foot contours.~~
- 26 b. ~~A description of the processes affecting the site, and surrounding areas that influence or~~
- 27 ~~could be influenced by the site, including areas in which stream processes, lake or marine~~
- 28 ~~geomorphic processes affect the site, including, but not limited to:~~
- 29 i. ~~Soil erosion, deposition, or accretion;~~
- 30 ii. ~~Evidence of past or potential channel migration;~~
- 31 iii. ~~Evidence of past or potential erosion due to tidal action and/or waves;~~
- 32 iv. ~~Littoral drift; and~~
- 33 v. ~~An estimate of shoreline erosion rates.~~
- 34 c. ~~A description and analysis of the urgency and risk associated with the specific site~~
- 35 ~~characteristics.~~
- 36 d. ~~A discussion and analysis demonstrating conformance with the standards enumerated in~~
- 37 ~~Chapter 16.16 WCC.~~
- 38 C. ~~Shoreline Area Regulations.~~
- 39 1. ~~Urban.~~
- 40 a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies~~
- 41 ~~and regulations of this program.~~

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- ~~b. Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - ~~c. Gabions are prohibited.~~
 - ~~2. Urban Resort.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - ~~c. Gabions are prohibited.~~
 - ~~3. Urban Conservancy.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Breakwaters and jetties may be permitted as a conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.~~
 - ~~c. Groins and gabions are prohibited.~~
 - ~~4. Shoreline Residential.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - ~~c. Gabions are prohibited.~~
 - ~~5. Rural.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - ~~c. Gabions are prohibited.~~
 - ~~6. Resource.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - ~~c. Gabions are prohibited.~~
 - ~~7. Conservancy.~~
 - ~~a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - ~~b. Breakwaters and jetties may be permitted as a conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.~~
 - ~~c. Groins and gabions are prohibited.~~
 - ~~8. Natural. Shoreline stabilization is prohibited, except that bioengineering approaches may be permitted as a conditional use when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.~~
 - ~~9. Aquatic.~~
 - ~~a. Bioengineering approaches are permitted on tidelands and shorelands when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere subject to policies and regulations of this program.~~

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- b. ~~Groins, breakwaters, and jetties may be permitted as a conditional use if such development is permitted in the abutting upland shoreline area designation.~~
- c. ~~Bulkheads or revetments are prohibited except for an approved water-dependent development subject to policies and regulations of this program.~~

- d. ~~Gabions are prohibited~~

23.440.180-200 Signs.

~~Signs in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

- ~~A. Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the Act and this program by addressing impacts to ecological functions, public safety and visual aesthetics.~~
- ~~B. 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.~~
- ~~C. Sign location and design should not significantly impair shoreline views.~~
- ~~D. 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.~~
- ~~E. Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.~~
- ~~F. Billboards and other off-premises signs are not water dependent, reduce public enjoyment of or access to shorelines, and often lower values of nearby properties. Such signs should not be located on shorelines except for approved community gateway or directional signs.~~
- ~~G. Signs near scenic vistas and view points should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.~~
- ~~H. Freestanding signs should be located to avoid blocking scenic views and be located on the landward side of public transportation routes which generally parallel the shoreline.~~
- ~~I. To minimize negative visual impacts and obstructions to shoreline access and use, low-profile, on-premises wall signs are strongly preferred over freestanding signs or off-premises wall signs.~~
- ~~J. Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passersby. Moving or flashing signs should be prohibited on shorelines.~~

~~B. Regulations.~~

~~A. General.~~

- ~~1. These provisions do not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, that no such sign exceeds four square feet in area.~~
- ~~2. In addition to the regulations in this section, signs are subject to WCC 20.80.400, et seq. (Signs)~~
- ~~1.3. Unless otherwise prohibited by zoning regulations or this program, shoreline developments are permitted to maintain a total of three on-premises signs. Only one may be a freestanding, roof,~~

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or projecting sign; provided, that if this sign is double-faced, then only one other wall sign is permitted. This provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, no sign exceeds four square feet in area. All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.

2. Multiuse or multitenant commercial developments shall erect no more than one sign at each street gateway.

3. Communities, neighborhoods and districts shall erect no more than one sign at each street gateway identifying the name of the community or neighborhood and give directions to local premises and public facilities.

4. Exception. Signs required by law and signs posted for legitimate safety purposes shall not be subject to limitations with respect to the number, location, and/or size; provided, that they are the minimum necessary to achieve the intended purpose. Such signs include but are not limited to official or legal notices issued and posted by any public agency or court, or traffic directional or warning signs.

5. All building signs shall be integrated with building design. Roof signs shall be designed to occupy a design feature of the roof such as a dormer or gable and may not be placed above the peak of a pitched roof or the eave of a flat roof. Projecting signs shall be incorporated in a marquee, canopy, or other architectural feature.

6. Applications for substantial development permits shall include a conceptual sign package addressing the size and location of all signs and shall include design standards to assure that all signs in a development are consistent in terms of material, color, height, size, and illumination.

7. Sign permits not associated with a substantial development permit shall demonstrate compliance with all provisions of this code and shall be similar to and compatible with other signs in a development under a single ownership or approved as an integrated development.

8.4. Sign illumination shall be indirect, incorporating exterior lighting shining on the sign, or shadow illumination behind nontransparent materials. Internally illuminated signs are prohibited.

9.5. Distracting Devices. Any signs or other devices which flash, blink, flutter, rotate, oscillate, or otherwise purposely fluctuate in lighting or position, in order to attract attention through their distractive character, are prohibited on shorelines; provided, that searchlights, pennants, banners and other devices of seasonal, holiday, or special event character may be utilizeuse for up to 90 days in one year.

10.6. Freestanding signs other than those private informational signs described in subsection (BA)(1) of this section are prohibited between a public right-of-way and the water where the water-body is visible from the public right-of-way.

11.7. To protect views from the water or publicly accessible beaches or lands adjacent to the water, freestanding signs other than those private informational signs described in subsection (BA)(1) of this section are prohibited between buildings and OHWM, and waterward of a line drawn from the nearest point of the building parallel to the shoreline; provided, that where a

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public road or path separates said building from the OHWM, up to one freestanding sign not to exceed 12 square feet is permitted between the road or path and said building.

12.8. Signs may not be located in critical areas or buffers as established by WCC Chapter 16.16 except as otherwise provided for ~~therein in Chapter 16.16 WCC; provided, that pursuant to subsections (B)(1) and (4) of this section, signs may be permitted within critical area buffers where the placement of such signs does not require the removal of vegetation.~~

13.9. ~~Unless specifically exempted from setback requirements in WCC 23.40.020, the~~ minimum required setbacks for permanent freestanding signs ~~are is 50 feet from the ordinary high water mark, where not subject to critical areas or buffers; 50 feet.~~

~~a. From side property lines: 10 feet.~~

~~b. Maximum height: 15 feet.~~

~~B. Building-mounted signs are subject to setbacks applicable to buildings. Height of wall signs may be measured from the floor elevation of the uppermost finished story; provided, the sign does not project above the roof of the building. Roof signs shall not extend higher than the maximum height of the primary building.~~

~~C. Sign Area Limit.~~

~~a. The maximum area of individual sign faces shall be consistent with applicable zoning standards; provided, that the combined area of sign faces per premises shall not exceed 60 square feet with a maximum face area of freestanding signs not to exceed 12 square feet in all shoreline designations where signs are permitted, except on aquatic, urban conservancy, and conservancy shorelines and shorelines of statewide significance where the total sign area shall not exceed 24 square feet per premises and freestanding signs shall not exceed 4 square feet.~~

~~b. The size of individual building or tenant signs shall be governed in accordance with the following table:~~

~~Table 3. Sign Area Limits~~

Relevant building wall vertical surface area or facade area for a specific tenant⁽¹⁾	Maximum sign surface area for that facade	Maximum sign area⁽²⁾
Below 100 sq. ft.	4 sq. ft.	4 sq. ft.
100 – 199 sq. ft.	4 sq. ft. + 4% of the facade area over 100 sq. ft.	8 sq. ft.
200 – 499 sq. ft.	10 sq. ft. + 3% of the facade area over 200 sq. ft.	20 sq. ft.
500 sq. ft. or greater	26 sq. ft. + 2% of the facade area over 500 sq. ft. up to a maximum of 40 sq. ft.	40 sq. ft.

~~1. (1) Includes only vertical building walls, excludes all roof area above the eaves and any dormers or other vertical areas above roof eaves. For building tenants, includes the area of the projection of the interior partitions onto the exterior wall.~~

~~2. (2) On aquatic and conservancy shorelines and shorelines of statewide significance, no sign visible from a public right of way, the water, or publicly accessible beaches or lands adjacent to the water, shall exceed 24 square feet, and freestanding signs shall not exceed four square feet.~~

3.10. Freestanding signs shall be entirely self-supporting and structurally sound without permanent use of guy wires or cables.

Comment [AP221]: Revised for consistency with WCC 23.40.020 (Bulk Provisions) per Scoping Document, Item #16b.

Comment [CES222]: Covered by 20.80.400

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4-11. Signs shall comply with the standards in this section at any time a change in use or modification of structures requiring a substantial development permit is approved. Abandoned or derelict signs should either be properly restored or completely removed within a reasonable period of time by the sign owner or property owner as necessary.

B. Regulations for Specific Shoreline Environment Designations.

1. In the Natural shoreline environment, sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.
2. In the Aquatic shoreline area environment, only wall signs and low-profile freestanding signs less than 30 inches in height for water-dependent uses are permitted, except as provided for in this section, and no premise may have more than two signs.

C. Shoreline Area Regulations.

- A. Urban. Sign development is permitted subject to policies and regulations of this program.
- B. Urban Resort. Sign development is permitted subject to policies and regulations of this program.
- C. Shoreline Residential. Sign development is permitted subject to policies and regulations of this program.
- D. Urban Conservancy. Sign development is permitted subject to policies and regulations of this program.
- E. Rural. Sign development is permitted subject to policies and regulations of this program.
- F. Resource. Sign development is permitted subject to policies and regulations of this program.
- G. Conservancy. Sign development is permitted subject to policies and regulations of this program.
- H. Natural. Sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in subsection (B)(1) of this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.
- I. Aquatic. Only wall signs and low profile freestanding signs under 30 inches in height for water-dependent uses are permitted, except as provided for in subsections (B)(1) and (4) of this section. No one premises may maintain more than two signs in an aquatic shoreline area.

Comment [AP223]: Carried over from removed 'Shoreline Area Regulations.'

Comment [CES224]: Addressed in use table now.

23.410.190-210 Transportation.

These regulations apply to both public and private transportation projects.

A. General. Roads, railways, and other transportation developments in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both public transportation projects and private transportation projects.

B. Policies.

C. New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:

D. Perpendicular water crossings are required for access to authorized uses consistent with this program; or

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- ~~E. Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in WCC 23.90.030.~~
- ~~F. Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.~~
- ~~G. Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.~~
- ~~H. New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.~~
- ~~I. Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.~~
- ~~J. Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.~~
- ~~K. Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.~~
- ~~L. Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.~~
- ~~M. Regulations:~~
- ~~A. General:~~
1. RCW 36.87.130 prohibits the County from vacating any county road that abuts a body of saltwater or freshwater except for port, recreational, educational, or industrial purposes. Therefore, development, abandonment, or alteration of undeveloped county road ends within SMP jurisdiction is prohibited unless approved in accordance with this program.
 2. Transportation development shall be carried out in a manner that maintains or improves state water quality standards for affected waters.
 3. Maintenance activity including vegetation control and erosion control shall be carried out consistent with this program. Necessary minor resurfacing of existing roadways and replacement of culverts that improve shoreline ecological functions may be exempt from substantial development permit requirements as provided by WCC 23.60.020 Title 22 (Land Use and Development).
4. Transportation facilities must meet the following criteria:
- a. ~~Documentation that~~ The proposed facilities cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of

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alternatives may be required. ~~New or expanded public or private~~ transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.

b. ~~Documentation that~~ The proposed facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.

~~c. Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16.~~

~~d. Documentation of how~~ The location, design, and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with WCC ~~23.30.02~~ 23.30.010 (Ecological Protection).

d. ~~Documentation that~~ The proposed facilities avoid public recreation areas and significant natural, ~~historic, archaeological~~ or cultural resources, or ~~that~~ no alternative is feasible outside of the shoreline and ~~that~~ all feasible measures to minimize adverse impacts have been incorporated into the proposal.

Comment [PDS225]: Redundent. Already a general regulation.

B. Site Design and Operation.

4-1. Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.

5-2. Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood ~~hazard reduction control~~ works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood ~~hazard reduction control~~, they shall comply with policies of the Comprehensive Plan and regulations for flood ~~hazard reduction control~~ works under WCC ~~23.40.08~~ 23.40.100 (Flood Hazard Reduction and Instream Structures).

6-3. If a road is demonstrated to be necessary along an accretion shoreform, the waterward road shoulder shall be set back far enough from the primary berm so that the berm may absorb the high energy of storm tide breakers, as well as prevent road bed erosion and allow optimum recreational use of these scarce shore features.

7-4. Spans on rivers shall avoid placing structures within the channel migration zone or other dynamic, shifting channel elements such as bends.

8-5. Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities sited close to water, wetlands, or other sensitive features shall incorporate the maximum

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feasible buffer of native vegetation in accordance with critical area regulations in WCC Chapter 16.16.

~~9.6.~~ Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.

~~10.7.~~ Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.

~~11.8.~~ Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials are prohibited. Preferred materials are concrete and steel.

~~12.9.~~ Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be ~~utilize~~used to cross wetlands.

10. Nonemergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.

A. C. Additional Standards for Parking Facilities.

1. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the water's edge and less intense adjacent land uses by vegetation ~~screening~~, undeveloped space, or structures developed for the authorized primary use.

~~1.2.~~ Parking areas shall be developed ~~utilizing~~using low impact development techniques whenever possible including, but not limited to, the use of permeable surfacing materials.

~~2.3.~~ Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the ~~most current~~ Low Impact Development Technical Guidance Manual for Puget Sound, or as amended.

~~3. Minimum required setbacks from shorelines are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.~~

D. Supplemental Application Requirements.

1. ~~In addition to the application requirements specified in WCC Title 22 (Land Use and Development), All~~ applications for ~~new or expanded~~ transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this program, including ~~but not limited to subsection (A)(4) of this section.~~

~~2. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be~~

Comment [DN226]: Moved from Site Planning section (WCC 23.30.080).

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- 1 required. New or expanded public or private transportation facilities should be located inland
- 2 from the land/water interface, preferably out of the shoreline.
- 3 3. Documentation that the facilities are primarily oriented to pedestrian use and provide an
- 4 opportunity for a substantial number of people to enjoy shoreline areas.
- 5 4. Documentation that the proposed facilities comply with critical area regulations in
- 6 Chapter 16.16 WCC.
- 7 5. Documentation of how the location, design, and use achieves no net loss of shoreline ecological
- 8 functions and incorporate appropriate mitigation in accordance with WCC 23.90.030.
- 9 6. Documentation that facilities avoid public recreation areas and significant natural, historic,
- 10 archaeological or cultural resources, or that no alternative is feasible outside of the shoreline
- 11 and that all feasible measures to minimize adverse impacts have been incorporated into the
- 12 proposal.

E. Regulations for Specific Shoreline Environment Designations.

- 14 1. In the Urban Conservancy and Conservancy shoreline area environments, transportation
- 15 facilities are permitted only for access to approved development.
- 16 2. In the Natural shoreline area environment, transportation facilities are prohibited, except to
- 17 access approved recreational development.
- 18 3. In the Aquatic shoreline area environment, access to water-dependent or water-related uses,
- 19 such as ferry terminals, is permitted. Bridge crossings for non-water-dependent or non-water-
- 20 related uses may be permitted as a shoreline conditional use.

A. Shoreline Area Regulations.

- 22 1. Urban. Transportation facilities are permitted subject to policies and regulations of this
- 23 program. Transportation facilities not serving a specific approved use, including roads, railways,
- 24 and parking areas, may be permitted as a conditional use, provided there is no feasible location
- 25 outside of the shoreline.
- 26 2. Urban Resort. Transportation facilities are permitted subject to policies and regulations of this
- 27 program. Transportation facilities not serving a specific approved use, including roads, railways,
- 28 and parking areas, may be permitted as a conditional use, provided there is no feasible location
- 29 outside of the shoreline.
- 30 3. Urban Conservancy. Transportation facilities are permitted only for access to approved
- 31 development, subject to policies and regulations of this program.
- 32 4. Shoreline Residential. Transportation facilities are permitted subject to policies and regulations
- 33 of this program. Transportation facilities not serving a specific approved use, including roads,
- 34 railways, and parking areas, may be permitted as a conditional use, provided there is no feasible
- 35 location outside of the shoreline.
- 36 5. Rural. Transportation facilities are permitted subject to policies and regulations of this program.
- 37 Transportation facilities not serving a specific approved use, including roads, railways, and
- 38 parking areas, may be permitted as a conditional use, provided there is no feasible location
- 39 outside of the shoreline.
- 40 6. Resource. Transportation facilities are permitted subject to policies and regulations of this
- 41 program. Transportation facilities not serving a specific approved use, including roads, railways,

Comment [AP227]: Carried over from removed 'Shoreline Area Regulations.'

Comment [CES228]: Addressed in use table now.

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and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

7. ~~Conservancy. Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this program.~~

8. ~~Natural. Transportation facilities are prohibited, except to access approved recreational development.~~

9. ~~Aquatic. Access to water dependent or water related uses, such as ferry terminals, is permitted subject to policies and regulations of this program. New or expanded bridge crossings for non-water dependent or non-water related uses may be permitted as a conditional use.~~

23.410.200-220 Utilities.

~~Utility development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both local and regional, both public and private utilities. This section applies to regional and local utilities, both public and private, but not to accessory utilities (see definitions in WCC Chapter 23.60); however, there are regulations regarding septic systems located in WCC 23.30.020 (Water Quality and Quantity).~~

~~A. Policies.~~

~~A. 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 this program.~~

~~B. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.~~

~~C. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in WCC 23.90.030.~~

~~D. 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.~~

~~E. Utilities should be located in existing rights-of-way and corridors whenever possible.~~

~~F. Utilities serving new development should be located underground, wherever possible.~~

~~G. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.~~

~~B. Regulations.~~

~~A. General Design and Operation.~~

Comment [AP229]: Added pursuant to scoping document item 17i.

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1. ~~Components of water systems. Utilities which that~~ are not water-dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other shoreline resources and values such as parks and recreation facilities, public access, and ~~archaeological, historic, and cultural resources, and or~~ aesthetic resources.
2. ~~Fire Protection Facilities.~~ Storage and handling facilities for water-borne firefighting or rescue equipment may be permitted on shoreline jurisdiction at locations which are suitable considering the purpose of the proposal and the policies of the Comprehensive Plan.
3. ~~Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.~~
- 3.4. ~~New and expanded u~~Utilities must meet the following criteria:
 - a. ~~Documentation that t~~The proposed facilities cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shorelands to connect specific end points. An analysis of alternatives may be required. ~~New or expanded public or private u~~Utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.
 - b. ~~Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16.~~
 - c. ~~Documentation of how t~~The location, design, and use of the proposed facility achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with WCC ~~23.30.020~~23.30.010 (Ecological Protection).
 - d. ~~Documentation that~~The proposed facilities will avoid public recreation areas and significant natural, ~~historic, archaeological or cultural resources~~ sites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.
 - d. ~~Applications must demonstrate~~The proposal includes adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.
 - e. ~~If the proposal is for oil, gas, and natural gas utilities and pipelines or electrical energy and communications utilities~~Application materials, it shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.
- B. ~~Additional Standards for Specific Utilities~~Water Systems.
 1. ~~Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.~~
 2. ~~Solid Waste Facilities.~~
 - a. ~~Private and public intake facilities, and wells on shorelines, should be located where there will be no net loss in ecological functions or adverse impacts upon shoreline resources, values, natural features, or other users.~~
 - b. ~~Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.~~

Comment [CES230]: Moved from Site Planning section; required by WAC 173-26-241(3)(i).

Comment [PDS231]: Redundant. Already a general regulation.

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~~c. Sewage Systems:~~

~~d. Sewage trunk lines, interceptors, pump stations, treatment plants and other components that are not water dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.~~

~~e. Outfall pipelines and diffusers are water dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.~~

~~f. Septic tanks and drainfields are prohibited where public sewer is reasonably available.~~

~~g. Solid Waste Facilities:~~ Facilities for processing, storage and disposal of solid waste are not normally water-dependent. Components that are not water-dependent shall not be permitted ~~on~~ in shoreline jurisdiction.

~~h. Disposal of solid waste on shorelines or in water-bodies has potential for severe adverse effects upon ecological processes and functions, property values, public health, natural resources, and local aesthetic values and shall not be permitted.~~

~~i. Temporary storage of solid waste in suitable receptacles is permitted as an accessory use to a primary permitted use, or for litter control.~~

~~2.3. Oil, Gas and Natural Gas Transmission.~~

~~a. Regional oil, gas, and natural gas utility pipelines, except local service lines, shall not be located in shoreline jurisdiction unless alternatives are demonstrated to be infeasible and shall include analysis of alternative routes avoiding aquatic lands and including alternative technology.~~

~~b. Local natural gas local service lines shall not be located in shoreline areas unless serving approved shoreline uses. Crossings of shorelines shall not be approved unless alternatives are demonstrated to be infeasible. Application materials shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~

~~c. Developers and operators of pipelines and related appurtenances for gas and oil shall be required to demonstrate adequate provisions for preventing spills or leaks, as well as established procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.~~

~~1.4. Electrical Energy and Communication Systems.~~

~~2. Energy and communication systems including substations, towers, transmission and distribution lines have critical location requirements, but are not normally water dependent. Systems components that are not water dependent shall not be located on shoreline jurisdiction unless alternatives are infeasible. Application materials for such facilities shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~

Comment [DN232]: Moved to the General Regs – Water Quality section as this would apply universally and relates more to accessory utilities

Comment [AP233]: Captured above.

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- a. Underground placement of lines shall be required on shorelines for new or replacement lines that are parallel to the shoreline, and do not cross water or other critical areas ~~defined in WCC Chapter 16.16~~; provided, that maintenance of existing aerial lines above 35kv may be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. New or replacement lines that cross water or other critical areas ~~defined in Chapter 16.16 WCC~~ may be required to be placed underground depending on impacts on ecological functions and processes and visual impacts; provided, that maintenance of existing aerial lines above 35 kv may be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. Poles or supports treated with creosote or other wood preservatives that may be mobile in water shall not be used along shorelines or associated wetlands. Where road rights-of-way or easements are within 150 feet and also are parallel to the shoreline for more than 500 feet, no new overhead wiring shall be installed between the road and OHWM.
 - b. Utilities for ~~new~~ development within the shoreline shall be installed underground.
 - ~~a. Other Utility Production and Processing Facilities. Other utility processing facilities, such as power plants, that are non-water oriented shall not be allowed in shoreline jurisdiction unless no other feasible alternative is available.~~
 - b. Minimum required setbacks from shorelines and side property lines and maximum height limits are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers, setbacks, height, open space and impervious surface coverage.
 - c. Site Coverage. Maximum site coverage for utility development including parking and storage areas shall not exceed standards in the underlying zoning in WCC Title 20 and shall not exceed 50 percent on urban, urban resort and shoreline residential shorelines, 35 percent on rural and resource shorelines and 20 percent on urban conservancy and conservancy shorelines.
 5. Hydropower Development. In addition to the general requirements, above, hydropower facilities shall be located, designed, and operated to:
 - a. Minimize impacts to fish and wildlife resources including spawning, nesting, rearing habitat, migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with WCC 23.30.010 (Ecological Protection).
 - b. Minimize impacts to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or educational value.
 - c. Accommodate public access to, and multiple use of, the shoreline.
 - d. Comply with the instream structure regulations of 23.40.100 (Flood Hazard Reduction and Instream Structures).
- C. Supplemental Application Requirements.
1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), All applications for new or expanded utilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this program, including but not limited to subsection (1)(b) of this section.

Comment [AP234]: Revised for conciseness and clarity.

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D. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline environments, local utility development is permitted; provided, that sewage outfalls and treatment plants, over-water communication or power-lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a shoreline conditional use, provided there is no feasible location outside the shoreline.
2. In the Natural shoreline environment, utility development is prohibited. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.
3. In the Aquatic shoreline environment:
 - a. Submarine electrical or communications cables, over-water public utility lines consisting of local distribution facilities if adequately flood-proofed, water intakes, and desalinization facility intakes are permitted.
 - b. Submarine water and sewer lines, fuel pipelines, sewer, and desalinization outfalls may be permitted as shoreline conditional uses.
 - c. Crossings of water-bodies by over-water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a shoreline conditional use. All other utility development is prohibited.

C. Shoreline Area Regulations

- A. Urban. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
- B. Urban Resort. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
- C. Urban Conservancy. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program; provided, that sewage outfalls and treatment plants, over-water communication or power lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Freestanding communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.
- D. Shoreline Residential. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use.

Comment [AP235]: Moved from 'Shoreline Area Regulations,' below.

Comment [CES236]: Addressed by use table now.

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- provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
- ~~E. Rural. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- ~~F. Resource. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- ~~G. Conservancy. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program; provided, that sewage outfalls and treatment plants, over-water communication or power lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Freestanding communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.~~
- ~~H. Natural.~~
- ~~a. Utility development is prohibited.~~
- ~~b. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.~~
- ~~I. Aquatic.~~
- ~~a. Submarine electrical or communications cables, over-water public utility lines consisting of local distribution facilities if adequately flood-proofed, water intakes, and desalinization facility intakes are permitted subject to policies and regulations of this program.~~
- ~~b. Submarine water and sewer lines, fuel pipelines, sewer, and desalination outfalls may be permitted as conditional uses.~~
- ~~c. Crossings of water bodies by over-water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a conditional use. All other utility development is prohibited.~~

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Chapter 23.50 ~~Applicability and~~ Nonconforming Uses, Structures, and Lots

Comment [AP237]: Moved Applicability portion to Chapter 23.10, Purpose, Intent, and Applicability

~~23.50.010 Application to persons and development.~~

Comment [AP238]: Moved to Chapter 23.10

~~C. This program shall apply to any person as defined in Chapter 23.110 WCC.~~

~~D. This program shall apply to any use or development as defined in Chapter 23.110 WCC. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC.~~

~~E. No substantial development as defined in Chapter 23.110 WCC shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 23.60.022.~~

~~23.50.020 Relationship to other local regulations.~~

Comment [AP239]: Moved to Chapter 23.05.

~~F. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.~~

~~G. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).~~

~~H. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.~~

~~I. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.~~

~~J. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:~~

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1. ~~Building, plumbing, mechanical, and fire codes;~~
2. ~~Boating and swimming, WCC Title 11;~~
3. ~~On-site sewage system regulations, Chapter 24.05 WCC;~~
4. ~~Solid waste rules and regulations, Chapter 24.06 WCC;~~
5. ~~Zoning, WCC Title 20;~~
6. ~~Land division regulations, WCC Title 21;~~
7. ~~Development standards;~~

23.50.020 Relationship to other state and federal laws.

- F. ~~Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~
- G. ~~At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~
- H. ~~Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
 1. ~~Flood Control Zone Act, Chapter 86.16 RCW;~~
 2. ~~Forest Practices Act, Chapter 76.09 RCW;~~
 3. ~~Fish and Wildlife, RCW Title 77;~~
 4. ~~Water Pollution Control Act, Chapter 90.48 RCW;~~
 5. ~~Land Subdivision Act, Chapter 58.17 RCW;~~
 6. ~~Surface Mining Act, Chapter 78.44 RCW;~~
 7. ~~Washington Clean Air Act, Chapter 70.94 RCW;~~
 8. ~~State Environmental Policy Act (SEPA), Chapter 43.21C RCW;~~
 9. ~~Camping Resorts Act, Chapter 19.105 RCW;~~
 10. ~~Water Resources Act of 1971, Chapter 90.54 RCW;~~
 11. ~~Growth Management Act, Chapter 35.70A RCW;~~
 12. ~~State Hydraulic Code, Chapter 77.55 RCW;~~
- I. ~~Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~
 1. ~~Northwest Clean Air Agency regulations;~~
 2. ~~Puget Sound Water Quality Management Plan;~~
- J. ~~Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~
 1. ~~Rivers and Harbors Act of 1899;~~
 2. ~~Fish and Wildlife Coordination Act of 1958;~~
 3. ~~National Environmental Policy Act of 1969 (NEPA);~~

Comment [AP240]: Moved to Chapter 23.05

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4. ~~Coastal Zone Management Act of 1972, as amended.~~

5. ~~Federal Water Pollution Control Act, as amended.~~

6. ~~Flood Insurance Act of 1968, as amended.~~

7. ~~Clean Air Act, as amended.~~

8. ~~Endangered Species Act (ESA).~~

23.50.040 Application within federal reserves.

B. ~~The shoreline permit procedures, policies and regulations established in this program shall apply to development or use of shorelines of the state within national forests, national parks and national recreation areas by persons other than federal agencies.~~

C. ~~As recognized by RCW 90.58.250, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~

Comment [AP241]: Moved to Chapter 23.05

23.50.050 Program effects on property values.

C. ~~As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the county assessor and the county board of equalization in establishing the fair market value of such properties.~~

D. ~~Designation of private property as a natural or conservancy shoreline area pursuant to Chapter 23.30 WCC shall qualify the property as meeting the definition of "open space land" under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and Chapter 3.28 WCC.~~

Comment [AP242]: Moved to Chapter 23.05

23.50.060 Hazardous substance remedial actions.

A. ~~The procedural requirements of Chapter 90.58 RCW shall not apply to a project for which a consent decree, order, or agreed order has been issued pursuant to Chapter 70.105D RCW or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall, in consultation with the administrator, assure that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and this program. (Ord. 2009-13 § 1 (Exh. 1)).~~

Comment [AP243]: Deleted per Periodic Review Checklist, Item 2017.c, and Scoping Document, Item #1c. Exceptions are now established in §22.07.010(G).

23.50.070 Nonconforming development.

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this program:

A. ~~The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the program or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC 16.16.290; provided further, that bulkheads shall conform to WCC 23.100.130.~~

B. ~~Nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased; provided, that~~

Comment [MD244]: Rewritten (below) per the latest DOE guidance that separates out nonconforming uses, development, and lots. See minor revisions to draft replacement text below.

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a nonconforming development that is moved any distance must be brought into conformance with this program and the Act; provided further, that as a conditional use a nonconforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.

C. ~~Nonconforming structures, other than single-family residences and their appurtenances that are expanded or enlarged must obtain a variance or be brought into conformance with this program and the Act; provided, that nonconforming structures with conforming uses may be expanded or enlarged within the existing building footprint as a conditional use pursuant to WCC 23.100.050(B)(1)(e).~~

D. ~~Nonconforming structures (including accessory structures) that are damaged or destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind; provided, that:~~

1. ~~Structures containing conforming uses, such as a single-family residence or accessory structure, that are located within a hazardous area shall be redeveloped consistent with the requirements of Chapter 16.16 WCC, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas); provided, that the permit process is commenced within 18 months of the date of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsections H and I of this section.~~

2. ~~Structures containing nonconforming uses can be replaced in kind if there is no feasible alternative that allows for compliance with the provisions of this program, and the permit process is commenced within 18 months of the date of such damage, and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection E or H of this section.~~

E. ~~If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land or premises shall be consistent with the provisions of this program.~~

F. ~~Replacement of any nonconforming structures or buildings or portions thereof within the aquatic shoreline area shall comply with program requirements for materials that come in contact with the water pursuant to WCC 23.90.040(B)(5); provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard provisions of this section.~~

G. ~~Enlargement or expansion of single-family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 23.110 WCC that extend waterward of the existing primary residential foundation walls further into a critical area (excluding the buffers of the critical areas), further into the minimum required side yard setback, or that increase the structure height above the limits established by this program shall require a variance; provided, that expansion of nonconforming single-family residences other than that specified in this subsection I may be expanded without a variance where the provisions of subsection J or K of this section apply.~~

- 1 ~~H. The enlargement or expansion of single-family residences by the addition of space to the exterior of~~
- 2 ~~the main structure or normal appurtenances is permitted without a conditional use permit or~~
- 3 ~~variance once during the life of the structure (100 years). The structure shall be located landward of~~
- 4 ~~the ordinary high water mark, and any expansion of the footprint is landward of the existing building~~
- 5 ~~footprint (not the side yard), and any vertical expansion is within the existing building footprint;~~
- 6 ~~provided, that the following conditions are met:~~
- 7 ~~1. Enlargements, expansions, or additions that increase the existing primary structure or normal~~
- 8 ~~appurtenances by up to 250 square feet of gross floor area as defined by Chapter 23.110 WCC~~
- 9 ~~shall be allowed provided the expansion or addition will occur on a previously impacted~~
- 10 ~~impervious surface and the expansion is not waterward of the common line setback as~~
- 11 ~~illustrated in Appendix F.~~
- 12 ~~2. Enlargements, expansions, or additions that increase the total footprint of the existing primary~~
- 13 ~~structure or normal appurtenances by 250 to 500 square feet of gross floor area as defined by~~
- 14 ~~Chapter 23.110 WCC shall be allowed; provided, that the addition will occur on a previously~~
- 15 ~~impacted impervious surface and the expansion is not waterward of the common line setback~~
- 16 ~~as illustrated in Appendix F; further provided, that the shoreline is enhanced by the equivalent~~
- 17 ~~area of a building footprint that is expanded. If enhanced through planting, the administrator~~
- 18 ~~shall require a vegetation management plan consistent with WCC 23.90.060(B)(2).~~
- 19 ~~I. The administrator shall require a conditional use permit if the enlargement or expansion of single-~~
- 20 ~~family residences by the addition of space to the exterior of the main structure or normal~~
- 21 ~~appurtenances is in excess of those allowances provided in subsection J of this section.~~
- 22 ~~J. A structure that is being or has been used for a nonconforming use may be used for a different~~
- 23 ~~nonconforming use only upon the approval of a conditional use permit. In addition to the~~
- 24 ~~conditional use criteria of WCC 23.60.040, before approving a conditional use for a change in~~
- 25 ~~nonconforming use, the hearing examiner shall also find that:~~
- 26 ~~1. No reasonable alternative conforming use is practical because of the configuration of the~~
- 27 ~~structure and/or the property;~~
- 28 ~~2. The proposed use will be at least as consistent with the policies and provisions of the Act and~~
- 29 ~~this program and as compatible with the uses in the area as the preexisting use;~~
- 30 ~~3. The use or activity is enlarged, intensified, increased or altered only to the minimum amount~~
- 31 ~~necessary to achieve the intended functional purpose;~~
- 32 ~~4. The structure(s) associated with the nonconforming use shall not be expanded in a manner that~~
- 33 ~~increases the extent of the nonconformity including encroachment into areas, such as setbacks,~~
- 34 ~~and any critical areas and/or associated buffers established by Chapter 16.16 WCC, where new~~
- 35 ~~structures, development or use would not be allowed;~~
- 36 ~~5. The vegetation conservation standards of WCC 23.90.060(B)(3) are met;~~
- 37 ~~6. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological~~
- 38 ~~functions and/or processes; and~~
- 39 ~~7. Uses which are specifically prohibited or which would thwart the intent of the Act or this~~
- 40 ~~program shall not be authorized.~~

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- 1 ~~K. Nonconforming lots are those that have a building area of less than 2,500 square feet available for a~~
2 ~~single-family residence and normal appurtenances that is unrestricted by setbacks or buffers from~~
3 ~~shorelines.~~
- 4 ~~L. Where permitted according to shoreline areas designations (WCC Table 23.100.010), new single-~~
5 ~~family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to~~
6 ~~the required shoreline buffer standards may be allowed without a shoreline variance when all of the~~
7 ~~following criteria are met:~~
- 8 ~~1. The depth of the lot (the distance from the ordinary high water mark to the inside edge of the~~
9 ~~frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC;~~
10 ~~and~~
- 11 ~~2. The building area lying landward of the shoreline buffer and interior to required side yard~~
12 ~~setbacks is 2,500 square feet or less; provided, that consideration shall be given to view impacts~~
13 ~~and all single-family residences approved under this section shall not extend waterward of the~~
14 ~~common line setback as measured in accordance with Appendix F. The building area means the~~
15 ~~entire area that will be disturbed to construct the home, normal appurtenances (except~~
16 ~~drainfields), and landscaping; and~~
- 17 ~~3. The lot is not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal~~
18 ~~erosion hazard areas or associated buffers as provided in WCC 16.16.310; and~~
- 19 ~~4. The nonconforming lot was created prior to August 8, 2008; and~~
- 20 ~~5. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to~~
21 ~~locating the residence in the least environmentally damaging location relative to the shoreline~~
22 ~~and any critical areas; and provided, that all administrative reductions to side yard and/or~~
23 ~~frontage setbacks are pursued, when doing so will not create a hazardous condition or a~~
24 ~~condition that is inconsistent with this program and WCC Title 20; and~~
- 25 ~~6. There is no opportunity to consolidate lots under common ownership that will alleviate the~~
26 ~~nonconformity; and~~
- 27 ~~7. The area between the structure and the shoreline and/or critical area shall comply with the~~
28 ~~vegetation conservation standards of WCC 23.90.060(B)(3); and~~
- 29 ~~8. Development may not take place waterward of the ordinary high water mark; and~~
- 30 ~~9. Facilities such as a conventional drainfield system may be allowed within critical areas or their~~
31 ~~buffers, except wetlands and buffers, outside of the building area specified above, subject to~~
32 ~~specific criteria in Chapter 16.16 WCC.~~
- 33 ~~M. Redevelopment of nonconforming rights-of-way and associated transportation structures, such as~~
34 ~~railroad trestles, may be permitted for purposes of facilitating the development of public trails~~
35 ~~and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent~~
36 ~~with the provisions of this program, including but not limited to the provisions for public access and~~
37 ~~no net loss of shoreline ecological functions and processes, except as provided for in subsections E~~
38 ~~and H of this section.~~

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23.50.010 Nonconforming Uses.

A. The lawfully established use of any building, structure, land, or premises existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present use regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC Chapter 16.16, Article 8 (Conservation Program on Agricultural Lands).

B. The expansion, alteration, and/or intensification of a nonconforming use is prohibited.

C. An existing use designated as a shoreline conditional use under present use regulations that lawfully existed prior to the effective date of the initial adoption of this program (August 27, 1976) or any applicable amendment thereafter and that has not obtained a shoreline conditional use permit shall be considered a legal use and may be continued subject to the provisions of this section without obtaining a shoreline conditional use permit.

D. Other than agricultural uses complying with WCC 16.16.800, if a use is discontinued for a period of 12 consecutive months or more, then any subsequent use, if allowed, shall be consistent with the provisions of this program and the Act.

E. The change of a nonconforming use to another type of nonconforming use is prohibited. may only occur upon the approval of a shoreline conditional use permit. In addition to the shoreline conditional use criteria of WCC Title 22 (Land Use and Development), before approving a shoreline conditional use for a change in nonconforming use, the Hearing Examiner shall also find that:

- No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
- The proposed use will be consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;
- The vegetation conservation management standards of WCC 23.30.050 are met;
- The change in use or remodel will not create adverse impacts to shoreline ecological functions and/or processes; and
- Uses that are specifically prohibited or that would thwart the intent of the Act or this program shall not be authorized;
- Public Access is provided as required by this program;
- Vegetation screening and/or view protection is provided as required by this program.

Comment [P/C245]: P/C Motion to prohibit.
Carried 8-1

23.50.011020 Nonconforming Structures.

A. A lawfully established structure existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but is no longer fully consistent with present regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided that:

1. Shoreline stabilization structures shall conform to WCC 23.40.190 (Shoreline Stabilization).

Comment [P/C246]: P/C Motion to delete.
Carried 7-2

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2. When maintenance and repair of a nonconforming structure has lapsed such that the structure or activity area is not in a usable condition, the structure or activity shall be considered to be abandoned or derelict and may no longer be continued.
 3. For structures where the ordinary high water mark establishes landward of the structure, this structure shall be considered to be abandoned or derelict and may no longer be continued.
 4. Non-overwater nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased, provided that a nonconforming structure that is moved any distance must be brought into conformance with this program and the Act, except as provided in subsection (C) and (D) of this section;
 5. Overwater nonconforming structures may be maintained or repaired to the extent that nonconformance with the standards and regulations of this program is not increased; provided that when replacement is the common method of repair, the replaced components shall meet the construction and materials standards of WCC 23.40.150 (Moorage Structures).
- B. Nonconforming structures (including accessory structures) that are damaged or destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind; provided, that:
1. Intentional demolition or removal is not a casualty.
 2. Damaged or destroyed nonconforming structures containing conforming uses that are located within a geologically hazardous area or frequently flooded area shall be reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas); provided, that the permit process is commenced within 18 months of the date of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in this section.
 3. Damaged or destroyed nonconforming structures containing nonconforming uses can be replaced in kind if:
 - a. There is no feasible alternative that allows for compliance with the provisions of this program;
 - b. The structure is reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas);
 - c. The permit process is commenced within 12 months of the date of such damage; and
 - d. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity.
- C. Nonconforming structures that do not meet the criteria of subsection (A)(2) but are intentionally demolished or removed with a valid demolition permit may be replaced with the same bulk dimensions provided that:
1. The permit process is commenced within 12 months of the date of such demolition or removal; and
 2. Such structures that are located within a geologically hazardous area or frequently flooded area shall be reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas).

Comment [CES247]: Revised to remind folks that a demo permit is required; and clarify that this does not apply to unusable structures addressed in A.2.

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- 1 D. Replacement of any nonconforming structures or buildings or portions thereof within the aquatic
2 shoreline environment shall comply with program requirements for construction design and
3 materials; provided, that replacement of existing wood pilings with chemically treated wood is
4 allowed for maintenance purposes where use of a different material such as steel or concrete would
5 result in unreasonable or unsafe structural complications; further provided, that where such
6 replacement exceeds 20% of the existing pilings over a 10-year period, such pilings shall conform to
7 the standard provisions of this section.
- 8 E. Other than for single-family residences and their appurtenances, nonconforming structures that
9 are shall not be altered, expanded or enlarged, or expanded without must be brought into
10 conformance with this program and the Act or obtain a variance unless such alteration, enlargement
11 or expansion would bring the structure into conformance with this program and the Act; provided,
12 that nonconforming structures with conforming uses may be enlarged or expanded within the
13 existing building footprint as a shoreline conditional use pursuant to WCC Title 22 (Land Use and
14 Development) 23.100.050(B)(1)(e) when the following criteria are met:-
15 1. The enlargement or expansion is within the existing building footprint;
16 2. The enlargement or expansion is in conformance with the bulk dimensional standards; and
17 3. Public access is provided and/or the shoreline environment is enhanced.
- 18 F. Single-family residences nonconforming to the shoreline buffer.
19 1. Enlargement or expansion of a primary single-family structure may be approved when either of
20 the following are met:
21 a. When the vertical expansion or enlargement is within the existing building footprint and is
22 in conformance with the bulk dimensional standards; or
23 b. When the enlargement or expansion meets all of the following.
24 i. The enlargement or expansion will not extend waterward of the building footprint of
25 the existing primary structure or the enlargement or expansion is consistent with the
26 constrained lot provisions in WCC 23.40.170 (Standards for Single-Family Residential
27 Use on Constrained Lots).
28 ii. The enlargement or expansion is not within a critical area or critical area buffer in a
29 manner inconsistent with this program.
30 iii. The enlargement or expansion is in conformance with the bulk dimensional standards.
31 2. The enlargement or expansion of single-family residences or normal appurtenances greater than
32 the constrained lot provisions of WCC 23.40.170(C) may be approved once during the life of the
33 structure (100 years); provided, that the following conditions are met:-
34 a. The existing structure must be located landward of the ordinary high water mark.
35 b. Building footprint enlargement or expansion:
36 i. Shall not increase the total building footprint by more than 500 square feet.
37 ii. Shall be landward or lateral of the existing footprint.
38 iii. Shall occur on a previously impacted impervious surface.
39 iv. Shall not occur waterward of the common line setback as described in WCC 23.40.020
40 (Shoreline Bulk Provisions).

Comment [MD248]: Under WAC 173-27-080
variance only needed if increasing nonconformity.

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v. ~~Shall be accompanied by enhancement of an area equivalent to the enlargement or expansion if the total building footprint increases by more than 250 square feet. If enhanced through planting, the Director shall require a vegetation management plan consistent with WCC 23.30.0540 (Vegetation Management).~~

c. ~~The property has not previously received a shoreline exemption under the provisions for a nonconforming or constrained lot.~~

G. ~~Redevelopment of nonconforming rights-of-way and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent with the provisions of this program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in this section.~~

~~23.50.012030 Nonconforming Lots.~~

~~A lawfully established lot existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present lot standards, shall be considered a legally nonconforming lot and may be developed subject to the provisions of this program.~~

~~Where permitted by the shoreline areas designation (WCC Table 23.100.010), new single-family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline setback standards may be allowed without a shoreline variance when the following criteria are met:~~

- ~~— The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC;~~
- ~~— The building area lying landward of the shoreline buffer and interior to required side yard setbacks is 2,500 square feet or less. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping, including any lawn, turf, ornamental vegetation, or gardens located in the outer management zone of the buffer pursuant to WCC 23.30.060(B)(2);~~
- ~~— Consideration shall be given to view impacts. Any single-family residences approved under this section shall not extend waterward of fifteen (15) feet landward of the OHWM, or the common-line setback as measured in accordance with WCC 23.30.060(A)(2)(b), whichever is further landward;~~
- ~~— The lot is not subject to landslide hazard areas or riverine and coastal erosion hazard areas or associated buffers as defined in WCC 16.16.310;~~
- ~~— The nonconforming lot was created prior to the effective date of this program (August 8, 2008);~~
- ~~— Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas, that all administrative reductions to side yard and/or frontage setbacks are pursued; and when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20. The standard front yard setback may be reduced to 20 feet pursuant to WCC 20.80.230(2). The standard side yard setbacks may be~~

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~~reduced to 5 feet of the total required side yard setbacks on one side and the balance on the other side pursuant to WCC 23.90.130.B.4; provided, that if the side yard setback reductions pursuant WCC 23.90.130.B.4 are insufficient, both side yard setbacks may be reduced to 5 feet.~~
~~There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;~~
~~The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of WCC 23.30.050(B);~~
~~Development may not take place waterward of the ordinary high water mark; and~~
~~Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in Chapter 16.16 WCC.~~

Comment [RCE249]: Moved to 23.40.170(C).

23.50.080 Property rights.

- A. ~~Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.~~
- B. ~~This program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner's permission.~~
- C. ~~Consistent with Whatcom County's high standard of staff conduct, county staff observe all applicable federal and state laws regarding entry onto privately owned property.~~

Comment [AP250]: Moved to Chapter 23.10

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Chapter 23.60 Shoreline Permits and Exemptions

Comment [MD251]: Unless otherwise noted, the contents of this chapter have been moved to T-22.

23.60.005 General requirements.

1. To be authorized, all uses and developments shall be planned and carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

Comment [RCE252]: Moved to applicability section.

23.60.010 Substantial development permits criteria.

- A. A substantial development permit shall be required for all proposed use and development of shorelines, unless the proposal is specifically exempt pursuant to WCC 23.60.022.
- B. In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:
 1. All regulations of this program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under WCC 23.60.030.
 2. All policies of this program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.
 3. For projects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.
- C. In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

Comment [RE253]: Moved to ecological protection and critical areas

23.60.020 Exemptions from Shoreline Substantial Development Permits process.

A. 23.60.021 Application and interpretation.

1. An exemption from the substantial development permit process is not an exemption from compliance with the Act, or this program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this program and the Act. A statement of exemption shall be obtained for exempt activities consistent with the provisions of WCC 23.60.020.
2. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
3. The burden of proof that a development, or use is exempt is on the applicant/proponent of the exempt development action.
4. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

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5. ~~A development or use that is listed as a conditional use pursuant to this program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.~~
 6. ~~When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.~~
 7. ~~All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the program.~~
- B. ~~23.60.022 Exemptions listed.~~**
1. ~~The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in WCC 23.60.023 of this program shall be required for those activities listed in WCC 23.60.023(B) and (C).~~
 - a. ~~Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718, or as amended by the state office of financial management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.~~
 - b. ~~Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.~~
 - c. ~~Construction of the normal protective bulkhead common to single family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the~~

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- purpose of creating dry land. When a vertical or near-vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.
- d. ~~Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC or this program, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.~~
 - e. ~~Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003; and further provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.~~
 - f. ~~Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.~~
 - g. ~~Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the state agency or local government having jurisdiction thereof. Single-family residence means a~~

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- detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in WCC 23.110.010.
- h. Construction of a dock, including a shared moorage, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family or multifamily residence. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. The private dock exemption applies if either:
 - i. In saltwater, the fair market value of the dock does not exceed \$2,500;
 - ii. In fresh waters the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this program. For the purpose of this section, saltwater shall include the tidally-influenced marine and estuarine water areas of the state including the Strait of Georgia, local marine waters and all associated bays, inlets and estuaries.
 - i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands; provided, that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003.
 - j. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
 - k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, that were created, developed or utilized, primarily as a part of an agricultural drainage or diking system.
 - l. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.
 - m. Site exploration and investigation activities that are prerequisite to preparation of a development application for authorization under this program, if:
 - i. The activity does not interfere with the normal public use of surface waters;
 - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;
 - iii. The activity does not involve the installation of any structure and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the administrator to ensure that the site is restored to preexisting conditions; and
 - v. The activity is not subject to the permit requirements of RCW 90.58.550.
 - n. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that

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is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43-21C RCW.

~~o. Watershed restoration projects as defined in Chapter 23.110 WCC and by RCW 89.08.460. The administrator shall review the projects for consistency with the program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in Chapter 23.110 WCC.~~

~~p. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:~~

- ~~i. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;~~
- ~~ii. The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and~~
- ~~iii. The administrator has determined that the project is consistent with this program. The administrator shall make such determination in a timely manner and provide it by letter to the project proponent.~~

~~C. 23.60.023 Statements of Exemption.~~

- ~~1. The administrator is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in WCC 23.60.022. Such statements shall be applied for on forms provided by the administrator. The statement shall be in writing and shall indicate the specific exemption of this program that is being applied to the development, and shall provide a summary of the administrator's analysis of the consistency of the project with this program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to WCC 23.60.150.~~
- ~~2. Exempt activities related to any of the following shall not be conducted until a statement of exemption has been obtained from the administrator: dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground disturbing activities such as landfill or excavation, dock, shore stabilization, freestanding signs, or any development within an aquatic or natural shoreline designation; provided, that no separate written statement of exemption is required for the construction of a single-family residence when a county building permit application has been reviewed and approved by the administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).~~

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- ~~3. No statement of exemption shall be required for other uses or developments exempt pursuant to WCC 23.60.022 unless the administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption or the administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.~~
- ~~4. Whether or not a written statement of exemption is issued, all permits issued within the area of shorelines shall include a record of review actions prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this program.~~
- ~~5. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following federal permitting requirements:
 - ~~a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899. (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or~~
 - ~~b. A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)~~~~
- ~~6. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.~~

~~23.60.030 Variance permit criteria.~~

- ~~A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this program and any associated standards appended to this program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.~~
- ~~B. Variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.~~
- ~~C. Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270(A) shall require a shoreline variance and shall meet the variance criteria in this section.~~
- ~~D. Variances may be authorized, provided the applicant/proponent can demonstrate all of the following:~~

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- ~~1. That the strict application of the bulk or dimensional criteria set forth in this program precludes or significantly interferes with reasonable permitted use of the property;~~
 - ~~2. That the hardship described in subsection A of this section is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of this program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;~~
 - ~~3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment;~~
 - ~~4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;~~
 - ~~5. That the public interest will suffer no substantial detrimental effect;~~
 - ~~6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and~~
 - ~~7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.~~
- ~~E. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined herein, or within any wetland as defined herein, may be authorized, provided the applicant can demonstrate all of the following:~~
- ~~1. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property; and~~
 - ~~2. That the proposal is consistent with the criteria established under subsections (D)(1) through (7) of this section; and~~
 - ~~3. That the public rights of navigation and use of the shorelines will not be adversely affected.~~
- ~~— Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of subsection D of this section are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted;~~
- ~~— where there are no likely detrimental effects to existing or future users, other features, or shoreline ecological functions and/or processes, and~~
- ~~— where reasonable alternatives of equal or greater consistency with this program are not available;~~
- ~~4. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.~~
- ~~F. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.~~
- ~~G. Permits and/or variances applied for or approved under other county codes such as WCC Title 20 or 21 shall not be construed as shoreline permits under this program.~~

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23.60.040 Conditional use permits criteria.

- A. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this program in a manner consistent with the policy of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the county or the Department of Ecology to control any undesirable effects of the proposed use.
- B. Uses specifically classified or set forth in this program as conditional uses and unlisted uses may be authorized, provided the applicant/proponent can demonstrate all of the following:
1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.
 2. That the proposed use will not interfere with normal public use of public shorelines.
 3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
 4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
 5. That the public interest suffers no substantial detrimental effect.
- C. Other uses not specifically classified or set forth in this program, including the expansion or resumption of a nonconforming use pursuant to WCC 23.50.070, may be authorized as conditional uses, provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in subsection B of this section, and that the use clearly requires a specific site location on the shoreline not provided for under the program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this program. Uses that are prohibited cannot be authorized by a conditional use permit.
- D. In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.
- E. Permits and/or variances applied for or approved under county zoning or subdivision code requirements shall not be construed as shoreline variances under this program.

23.60.050 Minimum application requirements.

Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program.

A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the Department's administrative manual; provided, that the administrator may vary or waive these requirements as provided in the manual and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the

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~~nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.~~

~~23.60.060 Pre-application conference.~~

~~A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision,~~

~~B. The applicant shall contact the County to schedule a pre-application conference, which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single-family residence.~~

~~23.60.070 Fees.~~

~~B. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time and Chapter 22.05 WCC.~~

~~C. When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced pursuant to WCC 22.25.030:~~

- ~~1. Preliminary plat application.~~
- ~~2. Rezone application.~~
- ~~3. Major development permit.~~
- ~~4. Planned unit development.~~
- ~~5. Binding site plan.~~

~~D. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.~~

~~E. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.~~

~~F. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.~~

~~23.60.080 Notice of application.~~

~~B. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application the County shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.~~

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- ~~C. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.~~

Comment [RCE254]: Moved to 23.05.040

23.60.090 Permit application review.

- ~~B. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application.~~
- ~~C. To facilitate review of an application the decision maker shall consider any or all of the following:~~
- ~~1. The application and attached information;~~
 - ~~2. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;~~
 - ~~3. Written comments from interested persons;~~
 - ~~4. Information and recommendations from any public agency and from the administrator in cases where the administrator is not the decision maker;~~
 - ~~5. Information or comment presented at a public hearing, if held, on the application; and~~
 - ~~6. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable.~~
- ~~D. The decision maker shall process project permit applications for shoreline substantial development permits, shoreline variance, and shoreline conditional use permits in compliance with the provisions of Chapter 22.05 WCC.~~
- ~~E. The decision maker shall process project permit applications for shoreline statements of exemption in accordance with the provisions of Chapter 22.05 WCC and WCC 23.60.023(A).~~
- ~~F. Any application for a shoreline permit or approval that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~
- ~~— If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.~~

23.60.100 Consolidated Permit Review.

- ~~A. Whenever an application for a project permit under the program requires a project permit or approval under another County permit authority, such as zoning or subdivision, the shoreline project permit application, time requirements, and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.~~
- ~~— The provisions of Chapter 22.05 WCC shall apply to the consolidated application, review, and approval of applications that require an open record hearing.~~
- ~~B. Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject~~

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to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

23.60.110 State Environmental Policy Act (SEPA) compliance.

- A. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall apply, where applicable.
- B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (Chapter 197-11 WAC).
- C. As part of SEPA review, the Responsible Official may require additional information regarding the proposed development in accordance with Chapter 197-11 WAC.
- D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the Responsible Official to determine the application incomplete.

Comment [RCE255]: Covered by WCC 16.08

23.60.120 Burden of proof.

Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in the Act and this program.

Comment [CES256]: Moved to Permit application review

23.60.130 Public Hearings.

- A. The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:
 - 1. The proposal has a cost or market value in excess of \$100,000 except for single-family residences, agriculture, commercial forestry, and ecological restoration projects; or
 - 2. The proposal would result in development of an area larger than five acres; or
 - 3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or
 - 4. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or
 - 5. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or
 - 6. The proposal requires a variance and/or conditional use approval pursuant to this program; or
 - 7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.
- B. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.
- C. Repealed by Ord. 2018-032.

Comment [CES257]: Moved/covered by Title 22 now

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~~D. Repealed by Ord. 2018-032.~~

~~E. Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.~~

23.60.140 Permit conditions.

In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.

Comment [CES258]: Moved to Permit application review.

23.60.XXX Filing with Department of Ecology

~~After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will hand deliver or mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office.~~

~~Project proposals that require both Shoreline Conditional Use Permits and or Variances shall be hand delivered or mailed simultaneously with any shoreline permit for the project.~~

~~The permit and documentation of final local decision will be mailed together the following information:~~

- ~~— A copy of the complete application;~~
- ~~— Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);~~
- ~~— The final decision of the local government;~~
- ~~— A completed permit data sheet (WAC Reference); and~~
- ~~— Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW;~~
- ~~— When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan;~~
- ~~— Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

23.60.150 Notice of Decision, Reconsideration and Appeal

~~A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of~~

Comment [CES260]: Moved to T-22

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- record in accordance with the review procedures of Chapter 22.05 WCC, and at least 10 days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:
- After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General.
 - Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits/shoreline permit for the project.
 - The permit and documentation of final local decision will be mailed together the following information:
 - 2. A copy of the complete application;
 - 3. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
 - 4. The final decision of the local government;
 - 5. A completed permit data sheet (see Appendix A of this title); and
 - 6. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.
 - 7. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.
 - A. Notice of decision for shoreline statements of exemption shall comply with WCC 22.05.110(1) and 23.60.023(E).
 - Any person with standing may appeal any order, final permit decision, or final administrative determination made by the director or designee in the administration of this program.
 - Administrative Appeal Procedures:
 - Administrative appeals are processed in accordance with WCC 22.05.160.
 - After the issuance of the appeal determination, a party with standing may Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of the "date of filing," as defined in this program and RCW 90.58.140(6). The appeal to the Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC.
 - Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter 461-08C WAC.
 - B. This program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this program for exempt actions pursuant to WCC 23.60.022;

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provided, that in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.

- A. ~~The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within 10 days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within 10 days of a final action.~~
- B. ~~Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the final decision by Whatcom County with the Department of Ecology.~~
- C. ~~Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the Shorelines Hearings Board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~
- D. ~~Any order, requirement or administrative permit decision, or determination by the administrator based on a provision of this program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the hearing examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~
- E. ~~Appeal Procedures.~~
 - 1. ~~Appeals shall be filed on forms supplied by the county within 10 calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within 20 calendar days of any other action of the administrator being appealed.~~
 - 2. ~~A public hearing on the appeal shall be held within 45 working days following receipt of the application for appeal.~~
 - 3. ~~Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the administrator at least 15 days prior to the hearing.~~
 - 4. ~~A decision by the hearing examiner shall be mailed within 10 working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.~~
 - 5. ~~Any party of record may request a closed record review of the hearing examiner's decision issued under subsection (H)(4) of this section by the county council. Such an appeal shall be filed with the county council on forms supplied by the county within 10 calendar days of the written decision. If appeal is made to the county council, notice of appeal shall be provided to all parties~~

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of record at least 15 days prior to consideration by the county council. The council shall meet to review the hearing examiner's decision within 21 days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the hearing examiner.

6. The time period for appeal to the Shorelines Hearings Board shall begin after the decision maker has filed the final county decision with the Department of Ecology.

23.60.160 Initiation of development

—Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing" or until all review proceedings before the Shorelines Hearings Board have terminated.

Date of Filing.

2. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.
3. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.

23.60.170 Revisions.

- A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program, or the Act. Changes that are not substantive in effect do not require a revision.
- B. An application for a revision to a shoreline permit shall be submitted to the administrator~~director~~. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.
- C. "Within the scope and intent of the original approval" means all of the following:
 1. No additional over water construction is involved except that a pier, dock, or floating structure may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less over that approved under the original approval;
 2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setbacks, or any other requirements of this program except as authorized under a variance granted for the original development;
—The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
 3. Additional or revised mitigation and/or landscaping is consistent with any conditions attached to the original approval and with this program;
 4. The use authorized pursuant to the original approval is not changed, and

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~~5. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.~~

~~Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required.~~

~~D. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.~~

~~E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection C of this section.~~

~~F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

~~If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection.~~

~~Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.~~

~~G. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-086 WAC.~~

23.60.180 Rescission and modification.

~~A. Any shoreline permit granted pursuant to this program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. If the results of a monitoring plan show a development to be out of compliance with specific performance standards, such results may be the basis for findings of noncompliance.~~

~~B. The Administrator shall initiate rescission or modification proceedings by issuing written notice of noncompliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.~~

~~C. The Hearing Examiner shall hold a public hearing no sooner than 15 days following such issuance of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.~~

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~~D. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.~~

~~23.60.190 Expiration.~~

~~A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:~~

~~1. Construction shall be commenced—or, where no construction is involved, the use or activity shall be commenced—within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the hearing examiner or administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.~~

~~2. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause, if a request for extension has been filed with the hearing examiner or administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.~~

~~—The effective date of a shoreline permit or exemption shall be the date of filing as provided in RCW 90.58.140(6).~~

~~—Tolling. The effective date does not include The time periods in (1) and (2) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the which the issued shoreline permit authorizes, development that authorize the development to proceed, including the pendency of all reasonably related administrative appeals or legal appeal actions on any such permits or approval, last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval.~~

~~—The applicant/proponent shall be responsible for informing the County of the of such pendency, of other permit applications filed with agencies other than the County and of any related administrative and legal actions on any permit or approval.~~

~~3. If no notice of the pendency of other permits or approvals is given to the County prior to the date of the last action by the County to grant County permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the county, and actions under other County development regulations, the date of the last action by the County shall be the effective date.~~

~~B. Notwithstanding the time limits established in subsections (A)(1) and (2) of this section, upon a finding of good cause based on the requirements and circumstances of the proposed project and~~

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~~consistent with the policies and provisions of this program and the Act, the Hearing Examiner or Administrator, as appropriate, may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The Hearing Examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in subsections (A), (1) and (2) of this section but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the proposed project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.~~

~~C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity; provided, that different time limits for compliance may be specified in the conditions of approval as appropriate.~~

~~— The Hearing Examiner or Administrator, as appropriate, shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by subsections A through C of this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this program previously listed shall require a new permit application.~~

~~D.—~~

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Chapter 23.70 Administration

Comment [MD261]: Entire chapter moved to T-22

~~23.70.010 Administrator.~~

~~D. The Administrator, as defined in WCC 23.110.010, is hereby vested with the authority to:~~

- ~~1. Overall administrative responsibility for this program.~~
- ~~2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to WCC 23.60.130.~~
- ~~3. Grant or deny statements of exemption.~~
- ~~4. Authorize, approve or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.~~
- ~~5. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW or this program; and seek remedies for alleged violations of this program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit issued by Whatcom County.~~
- ~~6. Decide whether or not a proposal is subject to the consolidated review process of Chapter 22.05 WCC and determine what other permits are required to be included in the consolidated review.~~
- ~~7. Make field inspections as needed, and prepare or require reports on shoreline permit applications.~~
- ~~8. Make written recommendations to the County Council or Hearing Examiner as appropriate and, insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.~~
- ~~9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this program.~~
- ~~10. The Administrator shall perform the following administrative responsibilities:~~
- ~~11. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this program;~~
- ~~12. Collect fees as provided for in WCC 23.60.070; and~~
- ~~13. Assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice.~~
- ~~14. Review administrative and management policies, regulations, plans and ordinances relative to lands under county jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this program.~~
- ~~15. Review and evaluate the records of project review actions in shoreline areas shoreline environments and report on the cumulative effects of authorized development of shoreline conditions. The Administrator Director shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested parties.~~
- ~~16. Make recommendations to the Planning Commission for open space tax designations pursuant to Chapter 84.34 RCW.~~

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1 ~~E. The Director of Planning and Development Services shall have the authority to develop~~
2 ~~administrative guidance materials related to the interpretations of principles and terms in this~~
3 ~~program as required to provide for consistent and equitable implementation of this program. Such~~
4 ~~administrative guidance documents shall be developed in consultation with the Washington State~~
5 ~~Department of Ecology to ensure that any formal written interpretations are consistent with the~~
6 ~~purpose and intent of Chapter 90.58 RCW, the applicable guidelines, and the goals and objectives of~~
7 ~~this program.~~

Comment [RCE262]: Moved to 23.10.

~~23.70.020 SEPA official.~~

8 ~~The Whatcom County SEPA responsible official is designated by WCC 16.08.040. The responsible official~~
9 ~~or his/her designee is hereby authorized to conduct environmental review of all use and development~~
10 ~~activities subject to this program, pursuant to Chapter 197-11 WAC and Chapter 43-21C RCW.~~

Comment [CES263]: Authority in WCC 16.08

~~23.70.030 Hearing Examiner.~~

12 ~~The Whatcom County Hearing Examiner is hereby vested with the authority to conduct open record~~
13 ~~hearings and prepare a record thereof pursuant to WCC 2.11.210.~~

~~23.70.040 Planning Commission.~~

15 ~~The Whatcom County Planning Commission is hereby vested with the responsibility to review the~~
16 ~~program from time to time as a major element of the County's planning and regulatory program, and~~
17 ~~make recommendations for amendments thereof to the County Council.~~

~~23.70.050 County Council.~~

19 ~~The Whatcom County Council is hereby vested with authority to:~~

- 20 ~~A. Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100.~~
21 ~~B. Adopt all amendments to this program, after consideration of the recommendation of the Planning~~
22 ~~Commission and pursuant to the procedural requirements of Chapter 2.02 WCC; provided, that~~
23 ~~substantive amendments shall become effective immediately upon adoption by the Department of~~
24 ~~Ecology.~~
25 ~~C. Make final decisions with regard to shoreline permit, shoreline variance or shoreline conditional use~~
26 ~~applications that require County Council action on a consolidated review as provided by Chapter~~
27 ~~22.05 WCC.~~
28 ~~D. Review and decide appeals to Hearing Examiner decisions pursuant to the procedures of WCC~~
29 ~~23.60.150.~~
30

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Chapter 23.80 Legal Provisions

Comment [MD264]: Entire chapter moved to 23.05 or 23.10

~~23.80.010 Amendments.~~

- ~~B. The County Council or the Planning Commission may initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100. The Planning Commission shall conduct a public hearing on any amendment proposed by the county council.~~
- ~~C. Any person may petition the County Council or Planning Commission to amend this program. Petitions shall specify the changes requested and any and all reasons therefor. The County Council or Planning Commission may schedule a public hearing on said petition(s) if it deems the proposed amendment would make this program more consistent with the Act and/or any applicable Department of Ecology Guidelines, or more equitable in its application to persons or property due to changed conditions in an area.~~
- ~~D. After approval or disapproval of a program amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the program amendment has been approved or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of publication for the amendment of a program is the date the County publishes notice that the program amendment has been approved or disapproved by the Department of Ecology.~~
- ~~E. The administrator shall submit an annual report to the County Council reviewing the effectiveness of the program in achieving its stated purpose, goals, and objectives. Such report may also include any proposed amendments deemed necessary to increase its effectiveness or equity. If said report contains proposed amendments, the Council may schedule a public hearing to consider such matter in accordance with the procedure described in subsection A of this section. Said report shall also include a determination of whether or not the goal of no net loss of shoreline ecological function is being achieved and provide recommendations for achieving and maintaining the goal.~~
- ~~F. Upon County Council adoption of a detailed community or subarea plan under the Whatcom County Comprehensive Plan, the Planning and Development Services Department shall prepare amendments, as appropriate, for the purpose of incorporating the goals, objectives, and standards of the community or subarea plan into this program. The Planning Commission shall schedule a public hearing upon receipt of such proposals, and shall give due consideration to the community objectives so expressed.~~

~~23.80.020 Violations and Penalties.~~

- ~~A. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within 10 calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within 72 hours following receipt of the stop work order.~~

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- 1 ~~B. In addition to incurring civil liability under WCC 23.80.030 and RCW 90.58.210, pursuant to RCW~~
2 ~~90.58.220 any person found to have willfully engaged in activities on shorelines of the state in~~
3 ~~violation of the provisions of the Act or of this program, or other regulations adopted pursuant~~
4 ~~thereto shall be punished by:~~
5 ~~1. A fine of not less than \$25,000 or more than \$1,000;~~
6 ~~2. Imprisonment in the county jail for not more than 90 days; or~~
7 ~~3. Both such fine and imprisonment;~~
8 ~~provided, that the fine for the third and all subsequent violations in any five-year period shall not be~~
9 ~~less than \$500.00 nor more than \$10,000. Provided further, that fines for violations of RCW~~
10 ~~90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit~~
11 ~~violation or each day of continued development without a required permit shall constitute a~~
12 ~~separate violation.~~
13 ~~C. The penalty provided in subsection B of this section shall be assessed and may be imposed by a~~
14 ~~notice in writing, either by certified mail with return receipt requested or by personal service, to the~~
15 ~~person incurring the same. The notice shall include the amount of the penalty imposed and shall~~
16 ~~describe the violation with reasonable particularity. In appropriate cases, corrective action shall be~~
17 ~~taken within a specific and reasonable time.~~
18 ~~D. Within 30 calendar days after the notice is received, the person incurring the penalty may apply in~~
19 ~~writing to the county for remission or mitigation of such penalty. Upon receipt of the application,~~
20 ~~the county may remit or mitigate the penalty upon whatever terms the county in its discretion~~
21 ~~deems proper. The county's final decision on mitigation or revisions may be reviewed by the hearing~~
22 ~~examiner if the aggrieved party files a written appeal therewith of said decision within 10 calendar~~
23 ~~days of its issuance.~~
24 ~~E. If work activity has occurred on a site in violation of this program, prompt corrective action,~~
25 ~~restoration or mitigation of the site will be required when appropriate. If this provision is not~~
26 ~~complied with, the county may restore or mitigate the site and charge the responsible person for~~
27 ~~the full cost of such an activity. Additionally, any and all permits or approvals issued by the county~~
28 ~~may be denied for that site for a period of up to six years.~~
29 ~~F. The county may suspend or revoke a permit if the applicant violates the conditions or limitations set~~
30 ~~forth in the permit or exceeds the scope of the work set forth in the permit.~~
31 ~~G. Any person who willfully violates any court order or regulatory order of injunction issued pursuant~~
32 ~~to this program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail~~
33 ~~for not more than 90 days, or both.~~
34 ~~23.80.030 Remedies.~~
35 ~~A. The Whatcom County prosecuting attorney or administrator, where authorized, shall bring such~~
36 ~~injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the~~
37 ~~shorelines of the state located within Whatcom County in conflict with the provisions of this~~
38 ~~program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the~~
39 ~~provisions of this program.~~
40 ~~B. Any person subject to the regulatory provisions of this program or the Act who violates any~~
41 ~~provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all~~

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1 damage to public or private property arising from such violation, including the cost of restoring the
2 affected area to its condition prior to violation. The Whatcom County prosecuting attorney shall
3 bring suit for damages under this section on their own behalf and on the behalf of all persons
4 similarly situated. If liability has been established for the cost of restoring an area affected by a
5 violation, the court shall make provision to assure that restoration will be accomplished within a
6 reasonable time at the expense of the violator. In addition to such relief, including money damages,
7 the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.
8 C. A person who fails to conform to the terms of a substantial development permit, conditional use
9 permit or variance issued under RCW 90.58.140, who undertakes a development or use on
10 shorelines of the state without first obtaining any required permit or authorization, or who fails to
11 comply with a stop work order may be subject to a civil penalty. The penalty shall be imposed
12 pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth
13 in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the shoreline
14 hearings board or the county council pursuant to WAC 173-27-290(1) and (2).
15 D. Any order, requirement or determination by the administrator pursuant to WCC 23.80.020 may be
16 appealed in accordance with the provisions of WCC 23.60.150(G) and (H).

23.80.040 Abatement.

17 Structures or development on shorelines considered by the administrator to present a hazard or other
18 public nuisance to persons, properties or natural features may be abated by the County under the
19 provisions of the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings,
20 1997 Edition, or successor as adopted by Whatcom County, or by other appropriate means.
21

Chapter 23.11060 Definitions

23.1160.005 Generally.

The terms used throughout this program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular. Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code.

23.1160.010 "A" definitions.

~~1. "Accessory development" means any development incidental to and subordinate to a primary use of a shoreline site and located adjacent thereto.~~

Comment [CES265]: This term is not used now; use "accessory use" throughout, which is defined in T-20.

~~2.1. "Accessory structure" means a structure that is incidental and subordinate to a primary use and located on the same lot as the primary use, such as barns, garages, storage sheds, and similar structures. Structures that share a common wall with a primary residential structure shall be considered an extension of the primary structure, rather than an accessory structure.~~

Comment [AP266]: Added for consistency with revisions made to Bulk Provisions Table per Scoping Document, Item #17d.

~~"Accessory use" means a use customarily incidental to a permitted use; provided, that such use shall be located on the same lot as the permitted use except where specifically permitted elsewhere in zoning district regulations.~~

Comment [AP267]: Captured in Zoning Code (Title 20).

~~3.2. "Accretion shoreform" means a shoreline with a relatively stable berm and backshore that has been built up by long-term deposition of sand and gravel transported by wind and/or water from a feeder bluff or other material source. Such shoreforms are scarce locally and Examples include, but are not limited to, barrier beaches, points, spits, tombolos, pocket beaches, and point and channel bars on streams.~~

~~4.3. "Act" means the Shoreline Management Act of 1971 (Chapter 90.58 RCW) as amended.~~

~~5. "Activity" means human activity associated with the use of land or resources.~~

Comment [CES268]: Term already defined in CAO.

~~6. "Administrator" or "Shoreline Administrator" means the director of the department of planning and development services who is to carry out the administrative duties enumerated in this program, or his/her designated representative.~~

Comment [CES269]: Term no longer used; has been replaced with "Director," in keeping with general direction of other, recent code overhauls.

~~7.4. "Adverse impact" means an impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment.~~

~~8.5. "Agricultural activities" means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining agricultural lands under production or cultivation. The construction of new structures or activities~~

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~~that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.~~

Comment [CES270]: From the CAO definition.

9-6. "Agricultural equipment" and "agricultural facilities" include, but are not limited to:

- a. The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
- b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- c. Farm residences and associated equipment, lands, and facilities; and
- d. Roadside stands and on-farm markets for marketing fruit or vegetables.

~~10-7.~~ "Agricultural land" means areas on which agricultural activities are conducted as of the date of adoption of this program pursuant to the State Shoreline Guidelines as evidenced by aerial photography or other documentation. After the effective date of this program, land converted to agricultural use is subject to compliance with the requirements herein.

~~11-8.~~ "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, poultry and poultry products, and dairy products.

~~12. "Alluvial fan" means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (e.g., significant change in slope or confinement).~~

Comment [CES271]: Already defined in Ch. 16.16

~~13-9.~~ "Alteration" means any human-induced change in an existing condition of a shoreline, critical area and/or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the area.

~~14. "Anadromous fish" means fish species that spend most of their lifecycle in saltwater, but return to freshwater to reproduce.~~

Comment [CES272]: Term not used in this document.

~~15-10.~~ "Appurtenance" means development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and/or the perimeter of a wetland. For the purposes of single-family residential exemptions, normal Appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which that does not exceed 250 cubic yards (except to construct a conventional drainfield) and that does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

~~16-11.~~ "Aquaculture" means the culture or farming ~~or culture of food~~-fish, shellfish, or other aquatic plants or animals. in freshwater or saltwater areas, and may require development such as fish hatcheries, rearing pens and structures, and shellfish rafts, as well as use of natural spawning and rearing areas. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery-free swimming fish or the harvest of shellfish not artificially planted or maintained, including the harvest of wild stock geoducks on DNR-managed lands.

Comment [CES273]: Definition amended to state definition from WAC 173-26-020(6).

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17. ~~"Aquaculture practices" means any activity directly pertaining to growing, handling, or harvesting of aquaculture produce including, but not limited to, propagation, stocking, feeding, disease treatment, waste disposal, water use, development of habitat and structures. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final processing and freezing.~~

Comment [CES274]: Term not used

~~18-12.~~ "Aquatic shoreline ~~area~~environment" means an area designated pursuant to WCC Chapter 23.230 (~~Shoreline Jurisdiction and Environment Designations~~).

19. ~~"Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.~~

20. ~~"Archaeological resource/site" means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects. "Significant" is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:~~

Comment [AP275]: Re-located to "Cultural resource" and "Cultural resource site" definitions

- a. ~~That are associated with events that have made a significant contribution to the broad patterns of our history; or~~
- b. ~~That are associated with the lives of significant persons in our past; or~~
- c. ~~That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or~~
- d. ~~That have yielded or may be likely to yield information important in history or prehistory.~~

~~21-13.~~ "Archaeologist" means a person who has designed and executed an archaeological study as evidenced by a thesis or dissertation and has been awarded an advanced degree such as an M.A., M.S. or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology; has a minimum of one year of field experience with at least 24 weeks of field work under the supervision of a professional archaeologist, including no less than 12 weeks of survey or reconnaissance work, and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the field work.

22. ~~"Archaeology" means systematic, scientific study of the human past through material remains.~~

Comment [CES276]: Term already found in T-20 definitions.

~~23-14.~~ "Associated wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers, or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline waterbody, formation by tidally influenced geohydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

24. 15. "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under a proposed building or structure.
In the case of structures to be built over water, average grade level shall be the elevation of the

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ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure, on that part of the lot to be occupied by the building or structure as measured by averaging the elevations at the center of all exterior walls of the proposed structure.

23.1.1 60.020 "B" definitions.

1. "Backshore" means the accretion or erosion zone, located landward of the line of ordinary high water, which is normally wetted only by storm tides. A backshore may take the form of a more or less narrow storm berm (ridge of wave-heaped sand and/or gravel) under a bluff, or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high water. It is part of the littoral drift process along its waterward boundary, a zone of accretion or erosion lying landward of the average high tide mark, wetted by tides during storm events.
2. "Barrier beach" means a linear ridge of sand or gravel extending above high tide, built by wave action and sediment deposition seaward of the original coastline; includes a variety of depositional coastal landforms, accretion shoreform of sand and/or gravel berm(s) accreted waterward of bluffs, bays, marshes or estuaries by littoral drift; the berm acts as a natural dike and seawall to its backshore or marsh hinterland.
3. "Beach nourishment" means a restoration or shoreline stabilization activity in which selected beach material is deposited at one or several locations in the updrift portion of a drift sector. The material is then naturally transported by waves or currents downdrift to stabilize or restore accretion shoreforms and other berms, which may be eroding due to artificial obstructions in the shore process corridor.
4. "Bed and Breakfast" means a privately owned dwelling that is the primary residence(s) of the owner in which, for compensation, one to five rooms are used as sleeping units to house or lodge individuals or families for periods of less than 30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.
- 3.5. "Bedlands" means those submerged lands below the line of extreme low tide in marine waters and below the line of navigability or navigable lakes and rivers. Where the line of navigability has not been established, bedlands would be those submerged lands below the OHWM in lakes and rivers.
- 4.6. "Bedrock" means a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.
- 5.7. "Berm" or "protective berm" means one or several accreted linear mounds of sand and gravel generally paralleling the shore at or landward of OHWM; berms are normally stable because of material size or vegetation, and are naturally formed by littoral drift.
- 6.8. "Best management practices" means conservation practices or systems of practices and management measures that:
 - a. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

Comment [CES277]: Amended to BAS definition (from Hugh Shippman's *A geomorphic classification of Puget Sound*)

Comment [CES278]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

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- b. Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitats;
- c. Control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.

~~7. "Bioengineered shoreline stabilization" means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features. Bioengineered stabilization uses vegetation, geotextiles, geosynthetics and similar materials. An example is vegetated reinforced soil slopes (VRSS), which uses vegetation arranged and embedded in the ground to prevent shallow mass movement and surficial erosion.~~

~~9. "Boathouse." See "Moorage Structure."~~

~~10. "Boat lift" or "lift." See Moorage Structure." means an in-water structure used for the dry berthing of vessels above the water level and lowering of vessels into the water. A boat lift as herein defined is used to berth and launch a single vessel suspended over the water's surface. A boat lift is generally a manufactured unit without a canopy cover and may be placed in the water adjacent to a dock or as stand-alone structure. A boat lift may be designed either for boats or personal watercraft. A boat lift is to be differentiated from a hoist or crane used for the launching of vessels. A boat lift with a canopy cover shall be considered a covered moorage for the purposes of this program.~~

~~8-11. "Bog" means a type of wetland dominated by mosses that form peat. Bogs are very acidic, nutrient poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.~~

~~9-12. "Breakwater" means an offshore structure that is generally built parallel to shore that may or may not be connected to land, and may be floating or stationary. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave-caused erosion.~~

~~10-13. "Buffer (buffer zone)" means the area adjacent to a shoreline and/or critical area that separates and protects the area from adverse impacts associated with adjacent land uses.~~

~~11-14. "Building" means any structure used or intended for supporting or sheltering any use or occupancy as defined in the International Building Code.~~

~~12-15. "Building area" means the entire area that will be disturbed to construct the home, normal appurtenances (except on-site sewage systems), and landscaping.~~

~~13-16. "Building footprint" means, for the purposes of this program, the ground area contained by the exterior walls of a building.~~

~~14-17. "Bulkhead" means a wall-like structure such as a revetment or seawall that is placed parallel to shore primarily for retaining uplands and fills prone to sliding or sheet erosion, and to protect uplands and fills from erosion by wave action.~~

~~23.1-60.030 "C" definitions.~~

~~1. "Canopy." See "Moorage Structure."~~

~~1. "Channel migration zone (CMZ)" means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent~~

Comment [CES279]: Now found under "Shoreline stabilization, soft-treatment"

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areas that are susceptible to channel erosion. There are three components of the channel migration zone: (a) the historical migration zone (HMZ)—the collective area the channel occupied in the historical record; (b) the avulsion hazard zone (AHZ)—the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (c) the erosion hazard area (EHA)—the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.

Comment [CES280]: Already defined in Ch. 16.16

2. "Channelization" means the straightening, relocation, deepening or lining of stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.

3. "Cherry Point management area" means a geographic area defined as all the shoreline areas within the jurisdiction of the Whatcom County shoreline management program lying between the eastern property boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North, Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as measured on a horizontal plane from the OHWM.

Comment [CES281]: Moved to "Official Map" section

3. "Clearing" means the removal destruction of vegetation or plant cover by manual, chemical, or mechanical means and that may result in exposed soils. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

Comment [CES282]: Already in Ch. 16.16

4. "Coastal high hazard area" means the area subject to high velocity waters, including, but not limited to, storm surge or tsunamis. The area is designated on the Flood Insurance Rate Map as Zone V1-V30, VE or V.

5. "Commercial development" means those developments whose primary use is for retail, service or other commercial business activities. Included in this definition are developments such as hotels, motels, ~~bed and breakfast establishments~~, shops, restaurants, banks, professional offices, grocery stores, laundromats, recreational vehicle parks, commercial rental campgrounds and cabins, whether public or private, and indoor or intensive outdoor commercial recreation facilities. Not included are private camping clubs, marinas, signs, utilities, ~~bed and breakfasts, short-term rentals~~, and other development.

Comment [CES283]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

6. "Commercial fish" means those species of fish that are classified under the Washington Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).

Comment [CES284]: Already in Ch. 16.16

7. "Compensatory mitigation" means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation, rehabilitation, and buffer enhancement.

Comment [CES285]: Already in Ch. 16.16

8. "Conditional use" for the purposes of this program means a use, development or substantial development listed in the regulations as being permitted only as a conditional use, or not classified in this program. Conditional uses are subject to review and approval pursuant to the criteria in

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~~Chapter 23.60 WCC regardless of whether or not the proposal requires a substantial development permit.~~

Comment [AP286]: Moved to "Shoreline Conditional Use" definition.

9-6. "Conservancy shoreline ~~area~~environment" means an area so designated in WCC

Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).

~~10. "Conservation" means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources to prevent depletion or harm to the environment.~~

Comment [CES287]: Already in Ch. 16.16

~~11. "Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.~~

Comment [CES288]: Already in Ch. 16.16

~~12. "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter 173-200 WAC).~~

Comment [CES289]: Already in Ch. 16.16

~~13-7. "County" means Whatcom County, Washington.~~

~~14-8. "Covered moorage" means a roofed floating or fixed offshore structure without walls, other than a minimal structural framework needed to support the roof, for moorage of water craft or float planes.~~

~~15. "Critical aquifer recharge area" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).~~

Comment [CES290]: Already in Ch. 16.16

16-9. "Critical areas" means the following areas as designated in WCC Chapter 16.16:

- a. Critical aquifer recharge areas.
- b. Wetlands.
- c. Geologically hazardous areas.
- d. Frequently flooded areas.
- e. Fish and wildlife habitat conservation areas.

10. "Critical habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified in WCC Chapter 16.16 with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

~~17-11. "Critical saltwater habitat" includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.~~

Comment [AP291]: Added for consistency with CAO.

~~25-16. "Archaeological object/Cultural resource" refers to any archaeological, historic, cemetery, or other cultural sites or artifacts; as well as those traditional food, medicine, fibers, and objects that sustain the religious, ceremonial, and social activities of affected Native American tribes that may be~~

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regulated under state or federal laws administered by the Washington State Department of Archaeologic and Historic Preservation (DAHP), means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.

Comment [CES292]: From DAHP guidance.

26. ~~“Archaeological resource/site~~Cultural resource site” means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains ~~archaeological objects~~cultural resources. ~~“Significant” is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:~~
- ~~That are associated with events that have made a significant contribution to the broad patterns of our history; or~~
 - ~~That are associated with the lives of significant persons in our past; or~~
 - ~~That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or~~
 - ~~That have yielded or may be likely to yield information important in history or prehistory.~~
- 18.12. “Current deflector” means an angled “stub-dike,” groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment.

Comment [CES293]: Deleted, as LNTHPO commented, “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.” Proposed for removal, as term “significant” is no longer used.

23.160.040 “D” definitions.

- “Dam” means a barrier across a stream or river to confine or regulate flow or raise water levels for purposes such as flood or irrigation water storage, erosion control, power generation, or collection of sediment or debris.
- ~~“Date of filing” refers to the beginning of the state Shorelines Hearings Board’s 21 day appeal period. Consistent with RCW 90.58.140(6), “date of filing” is defined as follows:~~
 - ~~For projects that only require a substantial development permit: the date that Ecology receives the County’s decision.~~
 - ~~For a shoreline conditional use permit or variance: the date the Ecology’s decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County.~~
 - ~~For substantial development permits simultaneously mailed with a shoreline conditional use permit or variance: the date that Ecology’s decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County.~~
- ~~“Debris flow” means a moving mass of rock fragments, soil, and mud; more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.~~
- “Department” means the Whatcom County Department of Planning and Development Services.
- “Department of Ecology” or “Ecology” means the Washington State Department of Ecology.
- “Development” means any land use activity, action, or manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, site work, and

Comment [AP294]: Added per Periodic Review Checklist, Item 2017.d, and Scoping Document Item #2a.

Comment [CES295]: Already in Ch. 16.16

Comment [AP296]: Added per Scoping Document, Item #7a.

Comment [CES297]: Amended for consistency with WAC 173-27-030.

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installation of utilities; land division, binding site plans, and planned unit developments; dredging, drilling, dumping, filling, grading, clearing, or removal of any sand, gravel, or minerals; shoreline stabilization works, driving of piling, placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, bulkheading, driving of piling, placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level. This term may include activities related to subdivision and short subdivisions; binding site plans; planned unit developments; clearing activity; fill and grade work; building or construction; and activities that are exempt from the substantial development permit process or that require a shoreline variance or conditional use.

4-6. "Dike" means an artificial embankment placed at a stream mouth or delta area to hold back sea water for purposes of creating and/or protecting arable land from flooding.

7. "Dock." See "Moorage Structure." means all platform structures or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water dependent recreation including, but not limited to, floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps.

5-8. "Director" means the Whatcom County Planning and Development Services director, or his/her designee. The Director is the Shoreline Administrator and is authorized to carry out the administrative duties enumerated in his program.

Comment [CES298]: Amended to reflect DOE definitions.

6-9. "Ditch" or "ditch" means an artificially created watercourse constructed to drain convey surface or ground water. Ditches are graded (manmade) channels installed to collect and convey runoff from fields and roadways. Ditches may include irrigation ditches, waste ways, drains, outfalls, operational spillways, channels, stormwater runoff facilities or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse. Ditched channels that support fish are considered to be streams.

7-10. "Dredge spoil" means the material removed by dredging.

8-11. "Dredging" means the removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom waterward of the OHWM of water-bodies or from wetlands. With the exception of regular maintenance of an approved barge landing site, maintenance dredging and other support activities are included in this definition.

12. "Drift sector" or "drift cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also any accretion shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift, and accretion shoreform.

9-13. "Drift sill" means a low elevation groin, typically constructed of rock, installed along with beach nourishment filled up to height of sill, that is sometimes used to hold or slow littoral transport of placed sediment without blocking longshore drift.

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10.14. "Driftway" means that portion of the marine shore process corridor, primarily the upper foreshore, through which sand and gravel are transported by littoral drift. The driftway is the essential component between the feeder bluff(s) and accretion shoreform(s) of an integral drift sector. Driftways are also characterized by intermittent, narrow berm beaches.

23.1460.050 "E" definitions.

1. "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-201(2)(c). Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

2. "Ecology" or "Department of Ecology" means the Washington State Department of Ecology.

3. "Ecosystem processes" or "ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

2-4. "Ells." See "Moorage Structure."

3-5. "Emergency activities" means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements and does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Director to be the appropriate means to address the emergency situation, upon abatement of the emergency, pursuant to the master program and RCW 90.58.030(3)(e)(iii), WAC 173-27-040(2)(d), or their successors. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not considered an emergency. those activities that require immediate action within a time too short to allow full compliance with this program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

4-6. "Enhancement" means actions performed within an existing degraded shoreline, critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

5. "Erosion" means the wearing away of land by the action of natural forces, such as wind, rain, water and other natural agents that mobilize, transport, and deposit soil particles; on a beach, the carrying

Comment [AP299]: Added per Scoping Document, Item #7a.

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~~away of beach material by wave actions, tidal currents, or littoral currents, a process whereby wind, rain, water and other natural agents mobilize, and transport, and deposit soil particles.~~

~~6-7.~~ "Erosion hazard areas" means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having "severe" or "very severe" erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

~~7-8.~~ "Essential public facility" means those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, ~~and group homes,~~ and secure community transition facilities as defined in RCW 71.09.020 (RCW 36.70A.200, Siting of essential public facilities).

~~8-9.~~ "Excavation" means the disturbance, displacement and/or disposal of unconsolidated earth material such as silt, sand, gravel, soil, rock or other material from all areas landward of OHWM.

~~9-10.~~ "Exempt development" means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040 and WCC ~~Chapter 23.60~~ Title 22 (Land Use and Development).

~~10-11.~~ "Extreme high water level" means the highest tide level reached in a 19-year tidal cycle, or on lakes, the highest water level reached in the past 10 years.

~~11-12.~~ "Extreme low tide" means the lowest line on the land reached by a receding tide.

~~23.146~~ **0.060 "F" definitions.**

1. "Fair market value" of a development means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. "Farm pond" means an open water depression created from a non-wetland site in connection with agricultural activities.
3. "Feasible" means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:
 - a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
 - b. The action provides a reasonable likelihood of achieving its intended purpose; and
 - c. The action does not physically preclude achieving the project's primary intended legal use.In cases where this program requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant/proponent. In determining an action's infeasibility, the County may weigh the action's relative costs and public benefits, considered in the short- and long-term time frames.

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- 1 4. "Feasible alternative" means an action, such as development, mitigation, or restoration, that meets
2 all of the following conditions: (a) the action can be accomplished with technologies and methods
3 that have been used in the past in similar circumstances, or studies or tests have demonstrated in
4 similar circumstances that such approaches are currently available and likely to achieve the
5 intended results; (b) the action provides a reasonable likelihood of achieving its intended purpose;
6 and (c) the action does not physically preclude achieving the project's primary intended legal use.
7 Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and
8 benefits.
- 9 5. "Feasible location" means a location that accommodates a development in a manner that achieves
10 its intended purpose consistent with the constraints of the applicable land use regulations and
11 characteristics of the property, including but not limited to lot size, configuration, presence/absence
12 of critical areas and compatibility with adjacent land use/development. Feasibility shall take into
13 account both short- and long-term monetary and nonmonetary costs and benefits.
- 14 6. "Feeder bluff" or "erosional bluff" means any bluff (or cliff) experiencing periodic erosion from
15 waves, sliding or slumping, and/or whose eroded sand or gravel material is naturally transported
16 (littoral drift) via a driftway to an accretion shoreform; these natural sources of beach material are
17 limited and vital for the long-term stability of driftways and accretion shoreforms.
- 18 7. "Feeder bluff exceptional" means relatively rapidly eroding bluff segments identified by the
19 presence of landslide scarps, bluff toe erosion, and a general absence of vegetative cover and/or
20 portions of bluff face fully exposed. Other indicators included the presence of colluvium (slide
21 debris), boulder or cobble lag deposits, and fallen trees across the beachface. Feeder bluff
22 exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
- 23 8. "Feedlot" means a concentrated, confined animal or poultry operation for production of meat, milk
24 or eggs; or stabling in yards, barns, pens or houses wherein animals or poultry are fed at the place of
25 confinement; and crop or forage growth or production is not sustained within the place of
26 confinement.
- 27 9. "Filling" means the ~~act of transporting~~ or ~~placing~~ by any manual or mechanical means ~~of~~ fill
28 material from, to, or on an area waterward of the OHWM, in wetlands, or on shorelands in a
29 manner that raises the elevation or creates dry land~~any soil surface~~, including temporary stockpiling
30 of fill material.
- 31 10. "Fill material" means any solid or semi-solid material, including rock, sand, soil, clay, plastics,
32 construction debris, wood chips, overburden from mining or other excavation activities, and
33 materials used to create any structure or infrastructure that, when placed, changes the grade or
34 elevation of the receiving site.
- 35 11. "Fish and wildlife habitat conservation areas" means those areas as defined in WCC Chapter 16.16
36 (Critical Areas) important for maintaining species in suitable habitats within their natural geographic
37 distribution so that isolated populations are not created, as designated in Chapter 16.16 WCC.
- 38 12. "Fish habitat" means a complex of physical, chemical, and biological conditions that provide the life-
39 supporting and reproductive needs of a species or life stage of fish. Although the habitat
40 requirements of a species depend on its age and activity, the basic components of fish habitat in

Comment [CES300]: Updated to be consistent with WAC 173-26-020(16)

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1 rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not
2 limited to, the following:

- 3 a. Clean water and appropriate temperatures for spawning, rearing, and holding.
- 4 b. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-
5 channel habitat.
- 6 c. Abundance of bank and instream structures to provide hiding and resting areas and stabilize
7 stream banks and beds.
- 8 d. Appropriate substrates for spawning and embryonic development. For stream- and lake-
9 dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged
10 rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand.
- 11 e. Presence of riparian vegetation as defined in this program. Riparian vegetation creates a
12 transition zone, which provides shade, and food sources of aquatic and terrestrial insects for
13 fish.
- 14 f. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and
15 downstream migrating juveniles and adults.

16 13. "Fisheries" means all species of fish and shellfish commonly or regularly originating or harvested
17 commercially or for sport in Puget Sound and its tributary freshwater bodies, together with the
18 aquatic plants and animals and habitat needed for continued propagation and growth of such
19 species.

20 14. "Fisheries enhancement" means actions taken to rehabilitate, maintain or create fisheries habitat,
21 including but not limited to hatcheries, spawning channels, lake rehabilitation, and planting of
22 fisheries stocks. Fisheries enhancement differs from aquaculture in that the increase in fisheries
23 stocks eventually becomes available for public harvest.

24 15. "Float" means an anchored (not directly to the shore) floating platform that is free to rise and fall
25 with water levels and is used for water-dependent recreational activities such as boat mooring,
26 swimming or diving. Floats may stand alone with no over-water connection to shore or may be
27 located at the end of a pier or ramp, a floating platform similar to a dock that is anchored or
28 attached to pilings.

29 16. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of
30 normally dry land areas from the overflow of inland waters and/or the unusual and rapid
31 accumulation of runoff of surface waters from any source.

32 17. "Flood control works" means all development on rivers and streams designed to retard bank
33 erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a
34 reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative
35 stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.

36 18. "Flood management" means a long-term program to reduce flood damages to life and property and
37 to minimize public expenses due to floods through a comprehensive system of planning,
38 development regulations, building standards, structural works, and monitoring and warning
39 systems.

40 19. "Flood-proofing" means structural provisions, changes, adjustments or a combination thereof, to
41 buildings, structures, and works in areas subject to flooding in order to reduce or eliminate damages

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from flooding to such development and its contents, as well as related water supplies and utility facilities.

~~20. "Floodplain, 100-year" means all lands along a river or stream that may be inundated by the base flood of such river or stream.~~

Comment [AP301]: Defined in CAO.

~~21. "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or the County. The limit of the floodway is that which has been established in the program and approved by the Department of Ecology.~~

Comment [AP302]: Update per Periodic Review Checklist, Item 2007.a, and Scoping Document, Item #2g.

~~22.20. "Floodway fringe" means that fringe of land in the floodplain outside the floodway, which is subject to inundation by the base flood. Flooding in the fringe is limited to flood surge storage of water currents moving at a negligible velocity of less than one-half mile per hour.~~

Comment [CES303]: Already defined in Ch. 16.16

~~23.21. "Food chain" means the hierarchy of feeding relationships between species in a biotic community. The food chain represents the transfer of material and energy from one species to another within an ecosystem.~~

~~24.22. "Foreshore" means the intertidal area between mean higher high water and mean low water.~~

~~23. "Fossil fuels" include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.~~

Comment [P/C304]: Showing amendments (in different color) from the P/C from their action on concurrent fossil fuel regulations in Title 20.

~~25.24. "Fossil Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading of fossil fuels materials, refined or unrefined, refinery feedstocks, products or by products from one transportation method (such as a ship, truck, or railcar) facility and loading it onto another transportation facility method for the purposes of transporting the fossil fuel such products into or and out of Whatcom County. Examples of transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming within the Cherry Point Industrial District and shall excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities.~~

~~26. "Fossil Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by products. This definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities.~~

Comment [DN305]: Added per Council's pending draft fossil fuel amendments.

~~"Forest land" means all land that is capable of supporting a merchantable stand of timber and is not being actively used, developed, or converted in a manner that is incompatible with timber production.~~

Comment [AP306]: Removed. Relying on Title 20 (Zoning).

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27. ~~"Forest practices" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing of timber, including, but not limited to: (a) road and trail construction, (b) fertilization, (c) prevention and suppression of diseases and insects, or other activities that qualify as a use or development subject to the Act.~~

~~28. 25. Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features. Also excluded from this definition is preparatory work associated with the conversion of land for non-forestry uses and developments. Log storage away from forest land is considered industrial.~~

29. ~~"Freestanding sign" means a self-supporting sign placed off and away from the building to which it is related.~~

Comment [AP307]: Removed. Already defined in Title 20 (Zoning).

Comment [AP308]: Removed. Already defined in Title 20 (Zoning).

30. 26. "Frequently flooded areas" means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the ~~100-year~~ floodplain "special flood hazard area" designations of the Federal Emergency Management Agency and the National Flood Insurance Program, as designated in WCC Chapter 16.16 (Critical Areas).

23. ~~14~~ 60.070 "G" definitions.

1. "Gabions" means works composed of masses of rock, rubble, or masonry tightly enclosed usually by wire mesh so as to form massive blocks. They are used to form walls on beaches to retard wave erosion or as foundations for breakwaters or jetties.

2. ~~"Gangway." See "Moorage Structure."~~

~~3. "Geologically hazardous areas" means areas designated in WCC Chapter 16.16 that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.~~

~~3-4. "Geotechnical report" or "geotechnical analysis/assessment" is an umbrella term used for the evaluation completed by a qualified professional to meet the requirements of WCC 16.16.255 (Critical areas assessment reports) and WCC 16.16, Article 3 (Geologically Hazardous Areas). means a scientific study or evaluation conducted by a qualified professional that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards.~~

4-5. "Gradient" means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth's surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio

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- (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).
- 5-6. "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.
- 6-7. "Groins" means wall-like structures extending on an angle waterward from the shore into the intertidal zone. Their purpose is to build or preserve an accretion shoreform or berm on their updrift side by trapping littoral drift. Groins are relatively narrow in width but vary greatly in length. Groins are sometimes built in series as a system, and may be permeable or impermeable, high or low, and fixed or adjustable.
7. ~~"Gross floor area" means, for the purposes of WCC 23.50.070(1), the sum total of the area included within the surrounding exterior walls of a building.~~
8. "Ground water" means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter 90.44 RCW).
9. "Growth Management Act" means Chapters 36.70A and 36.70B RCW, as amended.
- 23.160.080 "H" definitions.**
1. ~~"Habitat conservation areas." See "Fish and wildlife habitat conservation areas."~~
- 1-2. "Harbor area" means the navigable waters between inner and outer harbor lines as established by the State Harbor Lines Commission waterward of and within one mile of an incorporated city. Harbor areas have been established offshore of Bellingham and Blaine.
2. ~~Repealed by Ord. 2019-013.~~
3. ~~"Hazard tree" See WCC Chapter 16.16 (Critical Areas).~~
- 3-4. "Hazardous area" means any shoreline ~~area~~ environment which is hazardous for intensive human use or structural development due to inherent and/or predictable physical conditions, such as, but not limited to, geologically hazardous areas, frequently flooded areas, and coastal high hazard areas.
- 4-5. "Hazardous materials" means any substance containing such elements or compounds which, when discharged in any quantity in shorelines, present an imminent and/or substantial danger to public health or welfare, including, but not limited to: fish, shellfish, wildlife, water quality, and other shoreline features and property.
- 5-6. "Hazardous substance" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.
- 6-7. "Hearings board" means the State Shorelines Hearings Board referenced in RCW 90.58.170.
- 7-8. "Height (building)" means the distance measured from the average grade level to the highest point of a structure. Television antennas, chimneys, and similar structures or appurtenances shall not be used in calculating height except where they obstruct the view of residences adjoining such shorelines. Temporary construction equipment is excluded in this calculation (WAC 173-27-030(9) or its successor). For all moorage structures, height shall be measured from the ordinary high water mark~~the vertical dimension measured from average grade to the highest point of a structure;~~

Comment [MD309]: Deleted as term removed from referenced provision.

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~~provided, that antennas, chimneys, and similar appurtenances shall not be used in calculating height, unless such appurtenance obstructs the view of a substantial number of adjacent residences.~~

~~8-9.~~ “High intensity land use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high intensity ~~new~~ agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high intensity recreation (golf courses, ball fields), and hobby farms.

~~9-10.~~ “Historic preservation professional” means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor’s degree in architectural history, art history, historic preservation or closely related field plus one of the following:

- a. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
- b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

~~10-11.~~ “Historic site” means those sites that are eligible or listed on the Washington Heritage Register, National Register of Historic Places, or any locally developed historic registry formally adopted by the Whatcom County Council.

~~11-12.~~ “Hydraulic project approval (HPA)” means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 77.55 RCW.

~~12-13.~~ “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the NRCS “Field Indicators of Hydric Soils” Version 7, and/or the Corps of Engineers Wetlands Delineation Manual, as amended Washington State Wetland Identification and Delineation Manual (RCW 36.70A.175).

~~13-14.~~ “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

~~14-15.~~ “Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel mixed with shallow ground water. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition, and provides other functions related to maintaining water quality.

~~23.1-60.090~~ “I” definitions.

~~1.~~ “Impervious surface” means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Natural surface water and open, uncovered detention/retention facilities shall not be calculated when determining total impervious surfaces.

Comment [AP310]: Updated for consistency with CAO.

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~~Impervious surfaces do not include surfaces created through proven low impact development techniques.~~

Comment [AP311]: Removed. Relying on definition in Title 20 (Zoning).

~~2-1.~~ “In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

~~3-2.~~ “Instream structure” means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

~~4-3.~~ “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to ~~oil~~ metal or mineral product refining, power generating facilities, including hydropower, ship building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and material/equipment storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an agricultural use. This definition excludes fossil or renewable fuel refineries or transshipment facilities.

Comment [DN312]: Amended per Council’s pending draft fossil fuel amendments.

~~5-4.~~ “Infiltration” means the downward entry of water into the immediate surface of soil.

~~6-5.~~ “Institutional development” means those public and/or private facilities including, but not limited to, police and fire stations, libraries, activity centers, schools, educational and religious training centers, water-oriented research facilities, and similar noncommercial uses, excluding essential public facilities.

~~7-6.~~ “Intertidal zone” means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

~~8-7.~~ “Invasive species” means a species that is (a) nonnative (or alien) to Whatcom County and (b) whose introduction causes or is likely to cause economic or environmental harm, or harm to human health. Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

~~23.1160.100~~ “J” definitions.

1. “Jetties” means structures that are generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift in entrance channels, which may or may not be dredged. Jetties also serve to protect channels from storm waves or cross currents, and stabilize inlets through barrier beaches. On the West Coast and in this region, most jetties are of riprap mound construction.

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23.1160.110 "K" definitions.

Reserved.

23.1160.120 "L" definitions.

1. "Lake." ~~See WCC Chapter 16.16 (Critical Areas). means a body of standing water in a depression of land or expanded part of a stream, of 20 acres or greater in total area. A lake is bounded by the OHWM or, where a stream enters the lake, the extension of the lake's OHWM within the stream. Wetland areas occurring within the standing water of a lake are to be included in the acreage calculation of a lake.~~

Comment [AP313]: Updated for consistency with CAO.

2. "Landslide" means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material *en masse*; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

3. "Landslide hazard areas" means areas that, due to a combination of site conditions, like slope inclination and relative soil permeability, are susceptible to mass wasting, as designated in WCC Chapter 16.16 (Critical Areas).

3-4. "Launch Rail." See "Moorage Structure."

4-5. "Launch Ramp" or "Boat Ramp." See "Moorage Structure." ~~means an inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand.~~

5-6. "Levee" means a natural or artificial embankment on the bank of a stream for the purpose of keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides.

6-7. "Liberal construction" means an interpretation that applies in writing in light of the situation presented that tends to effectuate the spirit and purpose of the writing.

7-8. "Littoral drift" means the natural movement of sediment, particularly sand and gravel, along shorelines by wave action in response to prevailing winds or by stream currents (see also "drift sector," "driftway").

8-9. "Live-aboard" means any noncommercial habitation of a vessel, ~~as defined in WCC 23.110.220(3),~~ when any one of the following applies:

- a. Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of 30 days in any 40-day period or on more than a total of 90 days in any 365-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;
- b. The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;
- c. The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or
- d. The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

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9-10. "Log booming" means assembling and disassembling rafts of logs for water-borne transportation.

10-11. "Log storage" means the holding of logs in the water for more than 60 days.

11. "Lot" means land described by final plat, short plat or metes and bounds description and is established pursuant to applicable state and local regulations in effect at the date a legal instrument creating the lot is recorded at the Whatcom County auditor's office. A lot bisected by a public or private road, railroad, trail or other feature is considered a single building site unless the portion of the parcel on each side of the bisecting road or other feature separately meets all dimensional, buffer and other requirements established by local and state regulations.

12. "Lot area" or "lot size" means the portion of a total parcel determined to be usable for the purpose of creating a building lot, pursuant to all applicable regulations. The area below the ordinary high water mark shall not be considered a part of the lot area. Lot area shall exclude any portion included within the lot description used as a public road or as an access easement for another parcel; provided, that the area of parcels of five acres or greater may be regarded as nominal and may be measured to the center of bounding roads. Easements or restrictions that preclude use to the present or future surface owner of the parcel shall be excluded from lot area.

Comment [AP314]: Removed. Relying on Title 20 (Zoning).

Comment [CES315]: Defined in T-20.

23.1160.130 "M" definitions.

1. "Maintenance or repair" means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

2. "Major development" means any project for which a major project permit is required pursuant to Chapter 20.88 WCC. For the purposes of this program, "major development" shall also mean any project associated with an existing development for which a major development permit has been required or other existing legal nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 20.

Comment [AP316]: Removed term as it's no longer used.

3-2. "Marina" means a facility that provides wet moorage and/or dry storage facility for pleasure craft and/or commercial craft where goods, moorage or services related to boating may be sold commercially or provided for a fee, e.g., yacht club, etc. Launching facilities and covered moorage may also be provided. Marinas may be open to the general public or restricted on the basis of property ownership or membership. Manufacturing of watercraft is considered industrial. Shared moorage of 5 or more residential units is considered a marina.

4-3. "Marsh" means a low flat wetland area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage or other hydrophytic plants. Shallow water usually stands on a marsh at least during part of the year.

5-4. "Mass wasting" means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

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1 ~~6-5.~~ "May" means the action is allowable, provided it conforms to the provisions of this program.

2 ~~7-5.~~ "Mean annual flow" means the average flow of a river, or stream (measured in cubic feet per
3 second) from measurements taken throughout the year. If available, flow data for the previous 10
4 years should be used in determining mean annual flow.

5 ~~8-7.~~ "Mean higher high water" or "MHHW" means the mean elevation of all higher tides, generally
6 occurring twice each day in Whatcom County at any given location on the marine shoreline.

7 ~~9-8.~~ "Mean lower low water" or "MLLW" means the mean elevation of all lower tides, generally
8 occurring twice each day in Whatcom County at any given location on the marine shoreline.

9 ~~10-9.~~ "Mining" means the removal of naturally occurring metallic and nonmetallic minerals or other
10 materials from the earth for ~~economic-commercial and other~~ uses.

11 ~~11-10.~~ "Mitigation" means individual actions that may include a combination of the following
12 measures, listed in order of preference:

- 13 a. Avoiding an impact altogether by not taking a certain action or parts of actions;
- 14 b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
- 15 c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- 16 d. Reducing or eliminating an impact over time by preservation and maintenance operations
17 during the life of the action;
- 18 e. Compensating for an impact by replacing or providing substitute resources or environments;
19 and
- 20 f. Monitoring the mitigation and taking remedial action when necessary.

21 ~~12-11.~~ "Mitigation plan" means a detailed plan indicating actions necessary to mitigate adverse impacts
22 to critical areas.

23 ~~13-12.~~ "Mixed use" means a combination of uses within the same building or site as a part of an
24 integrated development project with functional interrelationships and coherent physical design.

25 ~~13.~~ "Monitoring" means evaluating the impacts of development proposals over time on the biological,
26 hydrological, pedological, and geological elements of ecosystem functions and processes and/or
27 assessing the performance of required mitigation measures through the collection and analysis of
28 data by various methods for the purpose of understanding and documenting changes in natural
29 ecosystems and features compared to baseline or pre-project conditions and/or reference sites.

30 ~~14.~~ "Moorage Buoy." See "Moorage Structure."

31 ~~15.~~ "Boat Lift" or lift. See "Moorage Structure."

32 ~~16.~~ "Mooring Pile" or piling. See "Moorage Structure."

33 ~~17.~~ "Moorage Structure" means any in- or overwater structures, used for mooring, launching, or storing
34 vessels and may contain any one or combination of the following:

- 35 a. Piers and docks adjoin the shoreline, extend over the water, and serve as a landing or
36 moorage place for commercial, industrial and pleasure watercraft.
 - 37 i. Piers are built on fixed platforms and sit above the water.
 - 38 ii. Docks are anchored to the land, substrate or the pier with pilings or anchors and float on
39 the water.
- 40 b. Gangways are walkways that connect the pier to the dock. Gangways are often used in areas
41 where the water level changes due to tides or seasonal variations.

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- c. Ells are extensions of piers, often in a U-shape or L shape, that provide additional watercraft moorage.
- d. Recreational floats are platforms that float on the water's surface. They are anchored offshore and are used for swimming and fishing. Some floats have components such as slides and trampolines.
- e. Boathouses basically serve as garages for boats. They have walls and a roof, and are situated on the water or just above the water's edge.
- f. Mooring buoys typically include an anchoring system with an anchor and anchor line, a float marking its location, and a fitting for a vessel's mooring chain or hawser. Washington laws establish two categories for mooring buoys -- commercial and recreational [RCW 79.105.430]. Commercial buoys are typically used for temporary moorage of a vessel that is awaiting transit or loading or offloading. Recreational buoys are used as semi-permanent moorage for recreational vessels.
- g. Mooring piles or pilings are fixed poles or groups of poles set in the substrate and extending above the water line.
- h. Lifts or boat lifts raise watercraft out of the water for launching or storing. They may be attached to the substrate, a pier or dock, bulkhead or float or be located upland.
- i. Canopies are covers that protect watercraft from the sun and rain.
- j. Boat or launch ramps are solid or relatively solid surfaces that bridge land and water and are used for moving watercraft into and out of the water.
- k. Railways are rails attached to the substrate used for launching and retrieving watercraft, usually with a cradle and winch system.
- l. Others such as Jet Ski floats and boat dry docks provide storage of watercraft out of the water. Some floats serve as helicopter pads, while others are used for docking seaplanes.
14. "Multifamily dwelling" means a single building, or portion thereof, designed for or occupied by three or more families living independently of each other in separate dwelling units on one lot of record and, for the purpose of this code, includes triplexes, fourplexes, apartment buildings, and residential condominiums.
- 15.18. "Must" means a mandate; the action is required.
- 23.14 **60.140 "N" definitions.**
 1. "Native vegetation" means plant species that are indigenous to the Whatcom County and the local area.
 - 2.1. "Natural shoreline area environment" means an area designated pursuant to WCC Chapter 23.320 (Shoreline Jurisdiction and Environment Designations).
 - 3.2. "Navigable waters" means a waterbody that in its ordinary condition, or by being united with other water-bodies, forms a continued route or area over which commerce or recreational activities are or may be carried on in the customary modes in which such commerce or recreation is conducted on water.
 - 4.3. "Nearshore habitat" or "nearshore zone" means the area of marine and estuarine shoreline, generally extending from the top of the shoreline bank or bluff to the depth offshore where light penetrating the water falls below a level supporting plant growth, and upstream in estuaries to the

Comment [CES317]: From DOE shoreline manual.

Comment [AP318]: Already defined in Title 20 (Zoning).

Comment [AP319]: Already defined in Title 20 (Zoning).

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head of the tidal influence. It includes bluffs, beaches, mudflats, kelp and eelgrass beds, salt marshes, gravel spits, and estuaries, zone that extends waterward from the marine shoreline (OHWM) to a water depth of approximately 20 meters (66 feet). Nearshore habitat is biologically rich, providing important habitat for a diversity of plant and animal species.

4. “No net loss” ~~as a public policy goal~~ means the maintenance of the aggregate total of the county’s shoreline ecological and/or critical area functions and values at its current level of environmental resource productivity. As a development and/or mitigation standard, no net loss requires that the impacts of a particular shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated, such that it has no resulting adverse impacts on shoreline ecological functions or ~~processes~~values. Each project shall be evaluated based on its ability to meet the no net loss standard commensurate with its scale and character.

5. ~~“Nonconforming lot” means, for the purposes of FWCC 22.50.070(k) and 22.50.060(8)(3), a vacant lot under contiguous ownership and with less than a total of 20,000 square feet, including within shoreline jurisdiction, a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.~~

~~that was lawfully established prior to the effective date of this program (August 27, 1976) or amendments hereto, but which does not conform to the setback or buffer standards of this program.~~

6. ~~“Nonconforming structure” means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.~~

7. ~~“Nonconforming use,” “nonconforming development” or “nonconforming structure” means an existing shoreline use, development or structure that was lawfully constructed or established prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendments thereafter hereto, but which does not conform to present use regulations due to subsequent changes to or standards of the master program.~~

8. “Non-water-oriented use” means uses that are not water-dependent, water-related or water-enjoyment. Non-water-oriented uses have little or no relationship to the shoreline and are not considered priority uses under the Shoreline Management Act except single-family residences. Any use that does not meet the definition of water-dependent, water-related or water-enjoyment is classified as non-water-oriented.

23.146.150 “O” definitions.

~~16. “Off-premises sign” means a sign situated on premises other than those premises to which the sign’s message is related.~~

1. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to, crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

2. “Ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems,

Comment [AP320]: Differentiating nonconforming lots, structures, and uses per Periodic Review Checklist, Item 2017.g, and Scoping Document, Item #2d and 10a.

Comment [AP321]: Already defined in Title 20 (Zoning).

Comment [DN322]: Added per Council’s pending draft fossil fuel amendments.

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changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

3. ~~"On-premises sign" means a sign situated on the premises to which the sign's message is related.~~

Comment [AP323]: Already defined in Title 20 (Zoning).

4-3. "Open space" means any parcel or area of land or water not covered by structures, hard surfacing, parking areas and other impervious surfaces except for pedestrian or bicycle pathways, or where otherwise provided by this title or other County ordinance and set aside ~~or~~ dedicated, for active or passive recreation, visual enjoyment, or critical area development buffers as established in WCC Chapter 16.16. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations. Required open space percentages, as applicable, are not to be used for purposes of calculating total impervious surface.

5-4. "Ordinary high water mark (OHWM)" ~~or "OHWM"~~ means the mark or line on all lakes, rivers, streams, and tidal water ~~means that mark~~ that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with approved development; provided, that in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water. For braided streams, the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs.

23.1160.160 "P" definitions.

1. "Party of record" means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on an application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.
2. "Permit or approval" means any form or permission required under this program prior to undertaking activity on shorelines of the state, including substantial development permits, variance permits, shoreline conditional use permits, permit revisions, and shoreline exemptions from the substantial development permit process.
3. "Person" means any individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity, either public or private, acting as a unit ~~an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.~~
4. "Pier." ~~See "Moorage Structure." means any platform structure, fill, or anchored device in or floating upon waterbodies and extending waterward from ordinary high water to provide moorage for~~

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~~industrial, commercial, and/or pleasure watercraft engaged in commerce, including, but not limited to: wharves, mono-buoys, sea islands, quays, ferry terminals, and fish weighing stations.~~

~~5. "Planned unit development (PUD)" means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.~~

Comment [AP324]: Already defined in Title 20 (Zoning).

~~6-5. "Pocket beach" means an isolated beach existing usually without benefit of littoral drift from sources elsewhere. Pocket beaches are produced by erosion of immediately adjacent bluffs or banks and are relatively scarce and therefore valuable shoreforms in Whatcom County; they are most common between rock headlands and may or may not have a backshore.~~

~~7-6. "Point" means a low profile shore promontory that may be either the wave-cut shelf remaining from an ancient bluff or the final accretional phase of a hooked spit that closed the leeward side gap. Points are accretion shoreforms characterized by converging berms accreted by storm waves that enclose a lagoon, marsh, or meadow, depending on the point's development stage.~~

~~8-7. "Point bar" means an accretion shoreform created by deposition of sand and gravel on the inside, convex side of a meander bend. Most material is transported downstream as sediment and bedload at times of high current velocity, or flood stage, from eroding banks or other bars upstream.~~

~~9-8. "Pond" means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than 30 percent aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds are excluded from this definition. Beaver ponds that are two years old or less are excluded from this definition. For the purpose of this program, any pond whose surface water extends into the OHWM of any shoreline of the state shall be considered part of that shoreline of the state.~~

~~10-9. "Port development" means public or private facilities for transfer of cargo or passengers from water-borne craft to land and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil or renewable fuel transshipment facilities.~~

Comment [DN325]: Added per Council's pending draft fossil fuel amendments.

~~11-10. "Potable" means water that is suitable for drinking by the public (Chapter 246-290 WAC).~~

~~12-11. "Preservation" means actions taken to ensure the permanent protection of existing, ecologically important areas that the County has deemed worthy of long-term protection.~~

~~13-12. "Primary association" means the use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s), as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding, nesting, or spawning.~~

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14-13. "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC 173-26-020(24)).

15-14. "Priority species" means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.

16-15. "Private dock" means a dock and/or float for pleasure craft moorage or water recreation for exclusive use by one waterfront lot owner.

17-16. "Private sign" means a sign used on a private residence to indicate only the owner's name or address, that the premises are for rent or sale, or for other reasonable purposes related to residential use including permitted home occupations.

18-17. "Project" means any proposed or existing activity regulated by Whatcom County.

19. "Project permit" or "project permit application" means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.

20. "Projecting sign" means a sign that is attached to and projects at an angle from a building's exterior wall.

21-18. "Public access" means the public's right to get to and use the state's public waters, both saltwater and freshwater, the water/land interface and associated shoreline area environment. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and/or visual access facilitated by means such as scenic roads and overlooks, viewing towers and other public sites or facilities.

22-19. "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from adverse effects of a use or development.

23. "Public utility" means a use owned or operated by a public or publicly licensed or franchised agency that provides essential public services such as telephone exchanges, electric substations, radio and television stations, wireless communications services, gas and water regulation stations, and other facilities of this nature.

Comment [AP326]: Already defined in Title 20 (Zoning).

Comment [CES327]: Already defined in Title 20 (Zoning).

Comment [AP328]: Already defined in Title 20 (Zoning).

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23.160.170 "Q" definitions.

1. ~~"Qualified professional" or "qualified consultant." See WCC 16.16 (Critical Areas), means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience and meet the following criteria:~~
 - a. ~~A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of three years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.~~
 - b. ~~A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of three years' professional experience related to the subject species/habitat type.~~
 - c. ~~A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.~~
2. ~~1. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.~~

23.160.180 "R" definitions.

1. "Recharge" means the process involved in the absorption and addition of water from the unsaturated zone to ground water.
2. "Recreation" means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Most shore-based recreation includes outdoor recreation such as: fishing, hunting, clamming, beach combing, and rock climbing; various forms of boating, swimming, hiking, bicycling, horseback riding, camping, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.
3. "Recreational development" means the modification of the natural or existing environment to accommodate recreation. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, wildlife enhancement (wildlife ponds are considered excavation), and other low intensity use outdoor recreation areas. Recreational homes/condominiums and related subdivisions of land are considered residential; resorts, motels, hotels, recreational vehicle parks, intensive commercial outdoor or indoor recreation, and other commercial enterprises are considered commercial.
4. ~~"Recreational Float." See "Moorage Structure."~~
4. ~~5. "Reestablishment" means measures taken to intentionally restore an altered or damaged natural feature or process including:~~
 - a. ~~Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;~~
 - b. ~~Actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or other events; and~~

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- c. Restoration can include restoration of wetland functions and values on a site where wetlands previous existed, but are no longer present due to lack of water or hydric soils.
5. "Rehabilitation" means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.
6. "Renewable biomass" includes but is not limited to the following:
- a. Planted crops and crop residue harvested from agricultural land.
 - b. Planted trees and tree residue from a tree plantation.
 - c. Animal waste material and animal byproducts.
 - d. Slash and pre-commercial thinnings.
 - e. Organic matter that is available on a renewable or recurring basis.
 - f. Algae.
 - g. Separated yard waste or food waste, including recycled cooking and trap grease.
 - a-h. Items a through g including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport.
7. "Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels. Common renewable fuels include ethanol and biodiesel:
- a. "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.
 - b. "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.
 - c. Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State Department of Ecology or US EPA.
- 5.8. "Renewable Fuel Refinery" means a facility that processes or produces renewable fuels. This definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities.
- 6.9. "Renovate" means to restore to an earlier condition as by repairing or remodeling. Renovation shall include any interior changes to a building and those exterior changes that do not substantially change the character of an existing structure.
- 7.10. "Residential development" means ~~buildings, earth modifications, development subdivision and~~ use of land primarily for human residence, including, but not limited to: single-family and multifamily dwellings, condominiums, mobile homes and mobile home parks, boarding homes, family daycare homes, adult family homes, retirement and convalescent homes, ~~bed and~~

Comment [P/C329]: Deleted by the P/C during their deliberations on concurrent fossil fuel regulations in Title 20, since federal regulations may be amended over time.

Comment [DN330]: Added per Council's pending draft fossil fuel amendments.

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breakfasts, and vacation rental units, together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, ~~and~~ hotels, ~~and other transient housing~~ are not included in this definition.

Comment [CES331]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

11. "Resource shoreline ~~area~~ environment" means an area designated pursuant to WCC Chapter 23.230 (~~Shoreline Jurisdiction and Environment Designations~~).

8-12. "Responsible Party" or "Party Responsible." The "responsible party" shall be assumed, in singular or plural, to be any individual, business, organization, or entity, property owner, or person having control of a property who has created or allowed to exist a violation of any applicable regulations, whether or not the violation is known to that person at the time the violation occurred or is occurring. A responsible party includes any person who aids, assists, or perpetuates a violation.

9-13. "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline ~~area~~ environment to aboriginal or pre-European settlement conditions.

10-14. "Revetment" means a ~~sloped wall means a sloping structure built to protect a scarp, embankment, or shore against erosion by waves or currents. Usually built of riprap, with heavy armor layer, one or more filler layers of smaller rock or filter cloth, and "toe" protection. A revetment slopes shoreward and has a rough or jagged face. Its sloping face absorbs wave energy and differentiates it from a bulkhead, which is a near vertical structure constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement.~~

Comment [CES332]: Updated to be more accurate.

11-15. "Riprap" means dense, hard, angular rock free from cracks or other defects conducive to weathering used for revetments or other flood control works.

12-16. "Riparian zone" means the area adjacent to a waterbody (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

13-17. "Riparian vegetation" means vegetation that tolerates and/or requires moist conditions and periodic free-flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilizes stream banks, attenuates high water flows, provides wildlife habitat and travel corridors, and provides a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

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~~14.18.~~ "River delta" means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels.

~~15.19.~~ "Rock shore" means those shorelines whose bluffs and banks are typically composed of natural rock formations.

~~16.20.~~ "Roof sign" means a sign erected upon, against, or directly above a roof, or on top of or above the parapet of a building; signs on mansard roofs shall be considered wall signs.

~~17.21.~~ "Rural shoreline area environment" means an area designated pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).

~~23.160.190~~ "S" definitions.

1. "Seismic hazard areas" means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

2. "Shall" means a mandate; the action must be done.

3. "Shared moorage" means moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of non-powered craft. If a shared moorage provides commercial services or is of a large scale (~~more than~~ four or more slips), it shall be considered a marina. Shared moorage proposed to be leased to upland property owners shall also be considered as a marina. If a proposal includes covered moorage, commercial sale of goods or services, or a means of launching other than a ramp, swinging boom, or davit style hoist, it shall be considered a marina.

4. "Shellfish" means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

5. "Shellfish habitat conservation areas" means all public and private tidelands suitable for shellfish, as identified by the Washington Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC 365-190-080. Any area that is or has been designated as a shellfish protection district created under Chapter 90.72 RCW is also a shellfish habitat conservation area.

6. "Shellfish protection district" means the Drayton Harbor shellfish protection district (DHSPD) (Ordinance 95-036) and the Portage Bay shellfish protection district (PBSPD) (Ordinance 98-069), or other area formed by the County based on RCW Title 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.

7. "Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58RCW.

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- 1 8. "Shorelines" means all of the water areas of the state as defined in RCW 90.58.030, including
2 reservoirs and their associated shorelands, together with the lands underlying them except:
 - 3 a. Shorelines of statewide significance;
 - 4 b. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic
5 feet per second or less and the wetlands associated with such upstream segments; and
 - 6 c. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.
- 7 9. "Shoreline Administrator" means the Director of the Department of Planning and Development
8 Services Department, or his/her designee, who is authorized to carry out the administrative duties
9 enumerated in this program or staff member designated by the director to perform the review
10 functions required in this program.
- 11 10. "Shoreline Conditional Use" for the purposes of this program means a use, development or
12 substantial development listed in the regulations as being permitted only as a shoreline conditional
13 use, or not classified in this program. Shoreline Conditional uses are subject to review and approval
14 pursuant to the criteria in WCC Chapter 23.60 Title 22 (Land Use and Development) regardless of
15 whether or not the proposal requires a substantial development permit.
- 16 11. "Shoreline jurisdiction" means all "shorelines of the state" and "shorelands."
- 17 12. "Shoreline permit" means a shoreline substantial development permit, a shoreline conditional use,
18 or a shoreline variance, or any combination thereof issued by Whatcom County pursuant to
19 Chapter 90.58 RCW.
- 20 13. "Shoreline residential area environment" means an area designated pursuant to WCC
21 Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).
- 22 14. "Shoreline stabilization" means structural or nonstructural modifications to the existing shoreline
23 intended to reduce or prevent erosion of uplands or beaches. They are generally located parallel to
24 the shoreline at or near the OHWM. Other construction classified as shore defense works include
25 groins, jetties and breakwaters, which are intended to influence wave action, currents and/or the
26 natural transport of sediments along the shoreline.
- 27 15. "Shoreline stabilization, bioengineered" means biostructural and biotechnical alternatives to
28 hardened structures (bulkheads, walls) for protecting slopes or other erosive features including soft-
29 treatment techniques. Bioengineered stabilization uses vegetation reinforced soil slopes (VRSS),
30 which uses vegetation arranged embedded in the ground to prevent shallow mass-movements and
31 surficial erosion.
- 32 16. "Shoreline stabilization, nonstructural" means a soft treatment which does not use driftwood, logs,
33 geotextile fabric, or other organic or nonorganic structural materials. Examples include:
 - 34 a. Addressing upland drainage issues;
 - 35 b. Planting stabilization vegetation without fill, grading, or use of nonbiodegradable geotextile fabric,
36 gabions or other stabilizing structures to provide temporary erosion control.
- 37 17. "Shoreline stabilization, replacement" means the construction of a new structure to perform a
38 shoreline stabilization function of an existing legally established shoreline stabilization structure
39 which can no longer adequately serve its purpose. Where ordinary high water has established
40 behind the structure replacement is considered a new shoreline stabilization.

Comment [AP333]: Relocated from
"Conditional Use."

Comment [CES334]: All shoreline stabilization
definitions from WAC and DOE guidance.

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18. "Shoreline stabilization, soft-treatment" means shore erosion control and restoration practices using only plantings or organic materials to restore, protect or enhance the natural shoreline environment. This technique mimics natural conditions for ecological functions and ecosystem-wide processes. When used, organic/biodegradable structural components are to be placed to avoid significant disruption of sediment recruitment, transportation, and accretion. Examples include:
- a. Bioengineered shoreline stabilization;
 - b. Beach nourishment/replenishment;
 - c. Vegetated soil stabilization retention methods;
 - d. Driftwood;
 - e. Coir fiber logs or other natural materials;
 - f. Nonstructural shoreline stabilization;
 - g. Beach berm.
19. "Shoreline stabilization, hard structure" means shore erosion control practices using hardened structures that armor and stabilize the shoreline landward of the structure from further erosion.
20. "Shoreline stabilization, hybrid structure" means an approach to erosion control that combines soft-treatment shoreline treatment placed waterward of more conventional structural shoreline stabilization elements. The soft treatment preserves natural beach contours and mimics habitat structure in order to preserve ecological functions. The hard structure provides long-term stability to the upland site, but is located sufficiently landward of the OHWM as not to impair ecological processes.
21. Shoreline Stabilization, New. Placement of shoreline stabilization where no such structure previously existed, including additions to or increases in size of existing shoreline stabilization measures, are considered new structures.
22. "Shoreline stabilization, structural" means shoreline stabilization which includes a footing, foundation, or anchors. Materials are typically hardened structures which armor the shoreline. See also "shoreline stabilization, hard structure" and "shoreline stabilization, hybrid structure."
23. "Shoreline view area" means any area looking waterward within the jurisdiction of this program between the OHWM and a public road, park, pathway, or other public area that is undeveloped or developed with accessory uses only; and that does not obstruct the view of the shoreline or would not obstruct the view if natural vegetation, fences, walls, antennas or similar obstructions were removed.
24. "Shorelines of statewide significance" means the following shorelines in Whatcom County:
- a. Those areas of Puget Sound and adjacent saltwaters between the ordinary high water mark and the line of extreme low tide as follows: Birch Bay from Point Whitehorn to Birch Point; and
 - b. Those areas of Puget Sound and adjacent saltwaters north to the Canadian line and lying waterward from the line of extreme low tide; and
 - c. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark including Lakes Whatcom, Baker and Ross; and
 - d. Those natural rivers or segments thereof as follows: any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more; including the Nooksack River's mainstream, the North Fork upstream to its confluence

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with Glacier Creek in Section 6, Township 39 North, Range 7 East, W.M.; and the South Fork upstream to its confluence with Hutchinson Creek in Section 9, Township 37 North, Range 5 East, W.M.

e. Shoreline jurisdiction associated with subsections ~~(15)~~(a), (c), and (d) of this section.

~~25.~~ "Shorelines of the state" means the total of all "shorelines" and "shorelines of statewide significance" within the state.

~~17-26.~~ "Short-term rental" means a dwelling unit where the owner is not present on site during the rental period, which, for compensation, is used to lodge individuals or families for a period of less than 30 days.

Comment [CES335]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

~~18-27.~~ "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Act and this chapter, against taking the action.

~~19-28.~~ "Sign" means any placard, billboard, display, message, design, letters, symbol, light, figure, illustration, set of pennants, or other device intended to identify, inform, advertise, or attract attention to any private or public premises, and placed mainly outdoors so as to be seen from any public or quasi-public place. Double-faced signs are counted as two signs. Excluded from this definition are official traffic, directional or warning devices, other official public notices, signs required by law, or flag of a government or other noncommercial institution.

~~20-29.~~ "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant impacts to ecological functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~21-30.~~ "Single-family development" means the development of a single-family residence permanently installed and served with utilities on a lot of record.

~~22-31.~~ "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's/proponent's ownership or control that is the subject of a development proposal or change in use.

~~23-32.~~ "Slope" means:

a. Gradient.

b. The inclined surface of any part of the earth's surface delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

~~33.~~ "Small Fossil or Renewable Fuel Storage and Distribution Facilities" means:

a. Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

b. Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, and that does not meet the definitions of fossil fuel or renewable refinery or transshipment facilities

Comment [P/C336]: Added by the P/C during their deliberations on concurrent fossil fuel regulations in Title 20.

~~24-34.~~ "Soil" means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

Comment [DN337]: Added per Council's pending draft fossil fuel amendments.

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- 1 ~~25-35.~~ "Solid waste" means all putrescible and non-putrescible solid and semi-solid waste including
2 garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned
3 vehicles and parts thereof, and any other discarded commodities.
- 4 ~~36.~~ "Spit" means an accretion shoreform that is narrow in relation to length and extends parallel to or
5 curves outward from shore; spits are also characterized by a substantial wave-built sand and gravel
6 berm on the windward side, and a more gently sloping silt or marsh shore on the lagoon or leeward
7 side; curved spits are called hooks.
- 8 ~~37. "Standing" is the status required for a person, agency, or other entity to bring an action before an~~
9 ~~appeal body. A person has standing per RCW 36.70C.060 if they are:~~
10 ~~a. The applicant and the owner of property to which the land use decision is directed; or~~
11 ~~b. Another person, county department, and/or public agency aggrieved or adversely affected by~~
12 ~~the land use decision, or who would be aggrieved or adversely affected by a reversal or~~
13 ~~modification of the land use decision. A person is aggrieved or adversely affected within the~~
14 ~~meaning of this section only when all of the following conditions are present:~~
15 ~~i. The land use decision has prejudiced or is likely to prejudice that person;~~
16 ~~ii. That person's asserted interests are among those that the local jurisdiction was required to~~
17 ~~consider when it made the land use decision;~~
18 ~~iii. A judgment in favor of that person would substantially eliminate or redress the prejudice to~~
19 ~~that person caused or likely to be caused by the land use decision; and~~
20 ~~iv. The petitioner has exhausted his or her administrative remedies to the extent required by~~
21 ~~law.~~
- 22 ~~26-38.~~ "Statement of exemption" means a written statement by the ~~administrator~~Director that a
23 particular development proposal is exempt from the substantial development permit requirement
24 and is generally consistent with this program including the policy of the Act (RCW 90.58.020),
25 pursuant to WCC ~~23.60.020~~ Title 22 (Land Use and Development).
- 26 ~~27-39.~~ "Streams" means those areas where surface waters produce a defined channel or bed. A
27 defined channel or bed is an area that demonstrates clear evidence of the annual passage of water
28 and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined
29 channel swales. The channel or bed need not contain water year-round. This definition includes
30 drainage ditches or other artificial water courses where natural streams existed prior to human
31 alteration, and/or the waterway is used by anadromous or resident salmonid or other fish
32 populations or flows directly into shellfish habitat conservation areas.
- 33 ~~28-40.~~ "Strict construction" means an interpretation that considers only the literal words of a writing.
- 34 ~~29-41.~~ "Structure" means a permanent or temporary building or edifice of any kind, or any piece of
35 work artificially built up or composed of parts joined together in some definite matter whether
36 installed on, above, or below the surface of the ground or water, except for vessels ~~(after~~
37 ~~International Building Code).~~
- 38 ~~30-42.~~ "Substantial development" means any development ~~of which the total cost or fair market value~~
39 ~~exceeds \$5,718 or as amended by the State Office of Financial Management, or any development~~
40 ~~which that~~ materially interferes with the normal public use of the water or shorelines of the state;
41 except the classes of development, listed in ~~WCC 23.60.022(A) through (P)~~WAC 173-27-040.

Comment [AP338]: Updated per Periodic Review Checklist, Items 2019.a, 2017.a, and 2016.a, and Scoping Document, Item #1a and 1e.

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31.43. "Substantially degrade" means to cause significant ecological impact.

32. "Surface mining" means all or any part of the processes involved in mining by removing the soil or rock overburden and mining directly from deposits thereby exposed, including also open pit mining, gravel bar scalping and mining of deposits naturally exposed at earth's surface, and including production of surface mining refuse.

33.44. "Sustained yield" means the continuing yield of a biological resource, such as timber from a forest, by controlled and periodic harvesting.

34.45. "Swamp" means a wetland that is often inundated and composed of woody vegetation.

Comment [AP339]: Already defined in Title 20 (Zoning).

23.1160.200 "T" definitions.

1. "Tideland" means the land on the shore of marine water-bodies between OHWM and the line of extreme low tide which is submerged daily by tides.
2. "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees.
3. "Toe" means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.
4. "Tombolo" means an accretion shoreform that began as a spit and accreted into a causeway-like connection to an island or offshore rock; tombolos normally develop from offshore bars (submarine berms) that build up in a low energy "wave-shadow" zone between the offshore, wave barrier element and an active driftway.
5. "Top" means the top of a slope; or in this program it may be used as the highest point of contact above a landslide hazard area.
6. "Transportation" means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings, spurs, and air fields. Not included are recreational trails, highway rest areas, ship terminals, seaplane moorages, nor logging roads; they are included respectively under "recreation," "pier," "dock," "residential," and "forest practices."

23.1160.210 "U" definitions.

1. "Unavoidable" means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.
2. "Upland" means dry lands landward of OHWM.
3. "Urban conservancy shoreline area environment" means an area designated pursuant to WCC Chapter 23.30-23.20 (Shoreline Jurisdiction and Environment Designations).
4. "Urban resort shoreline area environment" means an area designated pursuant to WCC Chapter 23.30-23.20 (Shoreline Jurisdiction and Environment Designations).
5. "Urban shoreline area environment" means an area designated pursuant to WCC Chapter 23.30-23.20 (Shoreline Jurisdiction and Environment Designations).
6. "Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.
 - a. "Accessory utilities" means on-site utility features such as a water, sewer, septic, electrical, or gas lines serving a primary use. Accessory utilities shall be considered part of the primary use.

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- b. "Local utilities" means utilities that serve adjacent properties and include, but are not limited to, powerlines, water, sewer, and stormwater facilities, fiber optic cable, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way.
- c. "Regional utilities" means utilities that serve more than one community or major attractions; examples include, but are not limited to, two hundred thirty (230) kv power transmission lines, natural gas transmission lines, and regional water storage tanks and reservoirs, regional water transmission lines or regional sewer collectors and interceptors. Regional utilities may also include facilities serving an entire community, such as subregional switching stations (one hundred fifteen (115) kv and smaller), and municipal sewer, water, and storm water facilities. Regional utilities include regional transmission pipelines for the bulk conveyance of natural gas, or pipelines termed a distribution pipeline but having characteristics that fit the definition of a transmission pipeline. Natural gas pipelines which are owned and operated by a gas utility company regulated by the State Utilities and Transportation Commission and which are distribution lines owned by the utility that provide natural gas service directly to county citizens and businesses shall not be considered regional transmission lines.

6-7. "Utility development" means development including, but not limited to, facilities for distributing, processing, or storage of water, sewage, solid waste, storm drainage, electrical energy including electronic communications, and their administrative structures, as well as pipelines for petroleum products, and fire-fighting facilities. Power plants are considered industrial.

23.1160.220 "V" definitions.-

1. "Vacation Rental Unit" means a single-family dwelling unit, detached accessory dwelling unit, or accessory apartment that, for compensation, is rented as a single unit used to lodge individuals or families for a period of less than 30 days and where the owner is not present in the rented unit during the rental period. Individual sleeping rooms shall not be rented individually.

2. "Variance" means an adjustment in the application of this program's bulk and dimensional regulations to a particular site pursuant to WCC Chapter 23.60 Title 22 (Land Use and Development).

3. "Vegetative stabilization" means planting of vegetation to retain soil and retard erosion, reduce wave action, and retain bottom materials. It also means utilization-use of temporary structures or netting to enable plants to establish themselves in unstable areas.

4. "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

23.1160.230 "W" definitions.

1. "Wall sign" means a sign placed upon and parallel to the exterior of a building.

2. "Waterbody" means a body of still or flowing water, fresh or marine, bounded by the OHWM.

3. "Water-dependent use" means a use or portion of a use that requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations.

4. "Water-enjoyment use" means a recreational use, or other use facilitating public access to the shoreline as the primary character of the use; or a use that provides for recreational use or aesthetic

Comment [AP340]: Language from WCC 20.82.030(2).

Comment [CES341]: Definitions added per Scoping Document, Item #7b to distinguish different levels of utility facilities.

Comment [CES342]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

Comment [AP343]: Already defined in Title 20 (Zoning).

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enjoyment of the shoreline for a substantial number of people as a general character of the use and that through the location, design and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the water-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~5.4.~~ "Water-oriented use" means any one or a combination of water-dependent, water-related or water-enjoyment uses and serves as an all-encompassing definition, together with single-family residences, for priority uses under the Act.

~~6.5.~~ "Water quality" means the characteristics of water, including flow or amount, and related physical, chemical, aesthetic, recreation-related, and biological characteristics.

~~7.6.~~ "Water-related use" means a use or portion of a use that is not intrinsically dependent on a waterfront location but depends upon a waterfront location for economic viability. These uses have a functional relationship to the water, or the use provides a necessary support service for a water-dependent use and physical separation is not feasible.

~~8.7.~~ "Watershed" means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and WRIA 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, Coastal).

~~9.8.~~ "Watershed restoration plan" means a plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resource character and ecology of a stream, stream segment, drainage area or watershed for which agency and public review have been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.

~~10.9.~~ "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or part of the plan and consists of one or more of the following activities:

- a. A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control erosive forces of flowing water; or
- c. A project primarily designated to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided, that any structures, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark.

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- 1 | ~~11.10.~~ "Weir" means a structure in a stream or river for measuring or regulating stream flow.
- 2 | ~~12.11.~~ "Wet season" means the period generally between November 1st and March 30th of most years
- 3 | when soils are wet and prone to instability. The specific beginning and end of the wet season can
- 4 | vary from year to year depending on weather conditions.
- 5 | ~~13.12.~~ "Wetlands" means areas that are inundated or saturated by surface water or ground water at a
- 6 | frequency and duration sufficient to support, and that under normal circumstances support, a
- 7 | prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally
- 8 | include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands
- 9 | intentionally created for non-wetland sites, including, but not limited to, irrigation and drainage
- 10 | ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds,
- 11 | and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally
- 12 | created as a result of the construction of a road, street, or highway. Wetlands may include those
- 13 | artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of
- 14 | wetlands.
- 15 | ~~14.13.~~ "Wetland edge" means the boundary of a wetland as delineated based on the definitions
- 16 | contained in ~~WCC this eChapter~~ 16.16 (Critical Areas).
- 17 | ~~15.14.~~ "Wood waste" means solid waste consisting of wood pieces or particles generated as a
- 18 | byproduct or waste from the manufacturing of wood products, handling and storage of raw
- 19 | materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark,
- 20 | pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing
- 21 | chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.
- 22 | ~~23.1160.240~~ "X" definitions.
- 23 | Reserved.
- 24 | ~~23.1160.250~~ "Y" definitions.
- 25 | Reserved.
- 26 | ~~23.1160.260~~ "Z" definitions.
- 27 | Reserved.
- 28 |



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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Presentation and 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	
09/14/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
09/28/2021	Council Committee of the Whole	DISCUSSED	

Attachments: ARPA Fund Priorities Memo July 20, 2021, Updated Spreadsheet for 9.28.2021, Council Meeting Whatcom County ARPA Funds Brainstorm 9.28.2021



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.

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 WCH funds (2.1M committed, if not)?
Capital		\$ 6,525,000	\$ 525,000	\$ 4,000,000	\$ 2,000,000		New Housing Units- Aloha (\$575K) and Laurel/Forest (\$1.5 M) Ord 2021-043
Eviction prevention (rental assistance)		\$ -					Set aside in the event \$16M (+ \$10m 2022) inadequate - conversation with Greg Winter pending
Shelter homeless		\$ 4,000,000			\$ 4,000,000		Family/Child Shelter and Old Town? - New Way ministries (\$100K) 5 unit (Lynden) - Engedi Shelter (Lynden)
Shelter hygiene		\$ 1,500,000		\$ 1,500,000			Waystation (supplement County funds)
Homeless outreach		\$ -					HOT outreach expansion.
Housing support services and case management		\$ -					
SUBTOTAL, HOUSING SECURITY	27%	\$ 12,025,000	\$ 525,000	\$ 5,500,000	\$ 6,000,000	\$ -	
Economic recovery - childcare							
Large facility shells		\$ 10,000,000		\$ 3,500,000	\$ 3,500,000	\$ 3,000,000	In qualified census tracts: Aloha, Millworks, Barkley, Opportunity Council. Shell purchase (ol condo). Separate from housing contribution - Boys and Girls Club Lynden
Large facility T/Is		\$ -					Same as above? Childcare Task force/David Webster
Small facility Expansion							Lynden B+GC (500K)
Premium pay and/or Workforce Dev.		\$ 3,000,000		\$ 2,000,000	\$ 1,000,000		Additional feedback needed. Focus on additional providers?
Scholarships or bonuses for child care providers		\$ -					Tuition reduction
SUBTOTAL, CHILDCARE	23%	\$ 13,000,000	\$ -	\$ 5,500,000	\$ 4,500,000	\$ 3,000,000	Track other State and Federal funding sources
Food security and basic needs							
Food banks		\$ -					Salvation Army, Outside the qualified census tract
Food purchases		\$ -					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/marginal biz, fitness/recreation, nightlife/theaters, minority business owners, microbusinesses/sole props. Those who have not and excellent function. Nonprofits have Commerce model. Needs to
Retail advocate/COVID support		\$ 250,000	\$ 250,000.00				Pt. Roberts Business and Employee Support
Permanent street alterations for COVID adaptations		\$ -					additional feedback needed
SUBTOTAL, BUSINESS SUPPORT	1%	\$ 250,000.00	\$ 250,000.00	\$ -	\$ -	\$ -	
Invest in capital projects							
Countywide Infrastructure		\$ 4,700,000		\$ 3,000,000	\$ 1,700,000		Work with City/PUIS/Port on infrastructure projects - East Blaine at \$1.5M for Sewer?, Lynden Fair Stormwater (150K)
SUBTOTAL, COUNTY WIDE INFRASTRUCTURE	11%	\$ 4,700,000					
Regional Water Infrastructure		\$ 3,000,000	\$ 3,000,000				\$1.4M - Black Slough, \$1.6M - Fish Camp, \$1.2M - Lynden's MARS project support
SUBTOTAL, REGIONAL WATER	7%	\$ 3,000,000					
Broadband		\$ 4,000,000		\$ 2,000,000	\$ 2,000,000		Hwy 9, Dering to Glacier, Pt. Roberts (If federal match is needed we could use EDI)
SUBTOTAL, BROADBAND	9%	\$ 4,000,000	\$ 3,000,000	\$ 5,000,000	\$ 3,700,000	\$ -	
Public Health							
Public Health		\$ 2,491,778	\$ 291,778	\$ 2,200,000			2021 is in Suppl #14, \$2.2 expected for 2022
Health Dept Data Infrastructure		\$ 550,000		\$ 550,000			Year 1 of 3 to upgrade data systems, Mid biennium request
Jail Testing		\$ 435,000	\$ 435,000				Ord 2021-043
IQ Facility		\$ 892,400	\$ 892,400				Ord 2021-036 is this being charged to FEMA instead? (Yes, remove once FEMA reimburses)
GRACE/Alt. Response Team		\$ 800,000		\$ 800,000			Health One Team Startup
BH Workforce/Case Management		\$ -					
SUBTOTAL, PUBLIC HEALTH	12%	\$ 5,169,178	\$ 1,619,178	\$ 3,550,000	\$ -	\$ -	
County Operations and Revenue Losses							
Criminal Justice Backlog		\$ 6,365,237	\$ 628,319	\$ 1,874,565	\$ 1,912,056	\$ 1,950,297	Over three years operational costs, Still need 1/Lease Ord 2021-054 + Space rent \$30K Suppl #15
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) Ord 2021-036
Costs of administrating ARPA		\$ 623,731	\$ 161,618	\$ 222,163	\$ 239,950		Grants manager, grant consultant, grant/contract specialist - Suppl #13, Ord 2021-054
HVAC, A/V and Facility Improve							Lynden Senior Center (250K) and Rec Center (200K)
SUBTOTAL, County Operations and Rev Losses	18%	\$ 7,829,418	\$ 1,630,387	\$ 2,096,728	\$ 2,152,006	\$ 1,950,297	
Reserve/Revenue Loss							
Reserve/Revenue Loss		\$ 2,568,925	\$ 1,068,925	\$ 1,500,000	\$ -		Use these backfilled funds to implement projects that aren't within these other categories. Funds will be used as Reserves for change priorities or needs
SUBTOTAL, Reserve and Rev Losses	6%	\$ 2,568,925	\$ 1,068,925	\$ 1,500,000	\$ -	\$ -	
TOTAL, ALL REQUESTS	118%	\$ 52,542,521	\$ 7,024,565	\$ 21,646,728	\$ 16,352,006	\$ 4,950,297	
ARPA Revenues		\$ 44,528,542	\$ 22,264,271	\$ 22,264,271	\$ -	\$ -	
Fund Balance		\$ (8,013,979)	\$ 15,239,706	\$ 617,543	\$ (16,352,006)	\$ (4,950,297)	

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 WCH funds (2.1M committed, if not?)
Capital		\$ 6,525,000	\$ 525,000	\$ 4,000,000	\$ 2,000,000		New Housing Units- Aloha (\$575K) and Laurel/Forest (\$1.5 M) Ord 2021-043
Eviction prevention (rental assistance)		\$ -					Set aside in the event \$16M (+ \$10m 2022) inadequate conversation with Greg Winter pending
Shelter homeless		\$ 4,000,000			\$ 4,000,000		Family/Child Shelter and Old Town? + New Way ministries (\$100K) \$ 5 unit (Lynden) - Engedi Shelter (Lynden)
Shelter hygiene		\$ 1,500,000		\$ 1,500,000			Waystation (supplement County funds)
Homeless outreach		\$ -					HOT outreach expansion.
Housing support services and case management		\$ -					
SUBTOTAL, HOUSING SECURITY	27%	\$ 12,025,000	\$ 525,000	\$ 5,500,000	\$ 6,000,000	\$ -	
Economic recovery - childcare							
Large facility shells		\$ 10,000,000		\$ 3,500,000	\$ 3,500,000	\$ 3,000,000	In qualified census tracts: Aloha, Milwaukie, Barkley, Opportunity Council. Shell purchase (of condo). Separate from housing contribution - Hwy and Girls Club Lynden.
Large facility T/Is		\$ -					Same as above? Childcare task force/David Webster
Small Facility Expansion							Lynden B+GC (500K)
Premium pay and/or Workforce Dev.		\$ 3,000,000		\$ 2,000,000	\$ 1,000,000		Additional feedback needed. Focus on additional providers?
Scholarships or bonuses for child care providers		\$ -					Tuition reduction
SUBTOTAL, CHILDCARE	29%	\$ 13,000,000	\$ -	\$ 5,500,000	\$ 4,500,000	\$ 3,000,000	Track other State and Federal funding sources
Food security and basic needs							
Food banks		\$ -					Salvation Army, Outside the qualified census tract
Food purchases		\$ -					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/makeover biz, fitness/recreation, nightlife/theaters, minority business owners, microbusiness/sole props. Those who have not yet received funding. Nonprofits from Commerce model. Needs to
Retail advocate/COVID support		\$ 250,000	\$ 250,000.00				Pt. Roberts Business and Employee Support
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SUBTOTAL, BUSINESS SUPPORT	1%	\$ 250,000.00	\$ 250,000.00	\$ -	\$ -	\$ -	
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SUBTOTAL, BROADBAND	9%	\$ 4,000,000	\$ 3,000,000	\$ 5,000,000	\$ 3,700,000	\$ -	
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SUBTOTAL, County Operations and Rev Losses	18%	\$ 7,829,418	\$ 1,630,387	\$ 2,096,728	\$ 2,152,006	\$ 1,950,297	
Reserve/Revenue Loss							
Reserve/Revenue Loss		\$ 2,568,925	\$ 1,068,925	\$ 1,500,000	\$ -		Use these backfilled funds to implement projects that aren't within these other categories. Funds will be used as Reserves for change priorities or needs
SUBTOTAL, Reserve and Rev Losses	6%	\$ 2,568,925	\$ 1,068,925	\$ 1,500,000	\$ -	\$ -	
TOTAL, ALL REQUESTS	33.8%	\$ 52,542,521	\$ 7,824,565	\$ 21,646,728	\$ 16,352,006	\$ 4,950,297	
ARPA Revenues		\$ 44,528,542	\$ 22,264,271	\$ 22,264,271	\$ -	\$ -	
Fund Balance		\$ (8,013,979)	\$ 15,239,706	\$ 617,543	\$ (16,352,006)	\$ (4,950,297)	



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-561

File ID:	AB2021-561	Version:	1	Status:	Introduced
File Created:	09/21/2021	Entered by:	CHalka@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance		
Assigned to:	Council Committee of the Whole				Final Action:
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic) to change consultant details and project timeline

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	INTRODUCED	Council Committee of the Whole

Attachments: Proposed Ordinance

ORDINANCE NO. _____

**AMENDING ORDINANCE NO. 2021-045 (REVIEW OF RESPONSE TO COVID-19
PANDEMIC) TO CHANGE CONSULTANT DETAILS AND PROJECT TIMELINE**

WHEREAS on July 13, 2021, Whatcom County Council adopted Ordinance No. 2021-045 to establish an independent review of the community response to the COVID-19 Pandemic; and

WHEREAS on September 14, 2021, Whatcom County Council discussed the details of the project (AB2021-525) and identified amendments to Ordinance No. 2021-045, including removing requisite qualifications of the commissioner and extending the timeline for completion of the project.

NOW, THEREFORE, BE IT ORDAINED that Ordinance No. 2021-045 is hereby amended and replaced in its entirety as shown in Exhibit A, attached.

ADOPTED this ____ day of _____, 2021.

ATTEST:

Dana Brown-Davis, Clerk of the Council

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Karen Frakes (by email) 9/21/2021

Civil Deputy Prosecutor

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Satpal Singh Sidhu, County Executive
() Approved () Denied

Date Signed: _____

EXHIBIT A

ORDINANCE TO ESTABLISH AN INDEPENDENT REVIEW OF THE COMMUNITY RESPONSE TO THE COVID-19 PANDEMIC

WHEREAS on January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington, and, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans, which easily spreads from person to person; and

WHEREAS on January 31, 2020, the United States Department of Health and Human Services secretary Alex Azar declared a national public health emergency arising from COVID-19; and

WHEREAS on March 11, 2020, the World Health Organization declared COVID-19 a pandemic with global spread, impacts, and health risks; and

WHEREAS in March 2020, Whatcom Unified Command (WUC) was activated to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally, in partnership with the Whatcom County Health Department; and

WHEREAS the staff of the Whatcom County Government; the cities of Bellingham, Lynden, Ferndale, Blaine, Nooksack, Everson, and Sumas; the Lummi and Nooksack Nations; PeaceHealth; medical providers; fire districts; businesses; non-profit and faith-based organizations; community groups; and countless citizens all stepped forward to collectively fight the pandemic; and

WHEREAS in all prior emergencies the County has faced, we could rely on neighboring communities or states to provide us with materials and skilled workers to help us cope – but as this was a truly global disaster, for a time we had to rely on our own internal County sourced resources to manufacture PPE, distribute food etc.; and

WHEREAS Whatcom County can expect future emergencies to arise, of a yet unknown type, which could include future pandemics, floods, fire, earthquake, cyber-attack, widespread communications loss, and perhaps even things we have not yet imagined; and

WHEREAS in the book “The Great Influenza” the story of the Spanish Flu pandemic the author concludes:

“The final lesson of 1918, a simple one yet one most difficult to execute, is that...those in authority must retain the public's trust. The way to do that is to distort nothing, to put the best face on nothing, to try to manipulate no one. Lincoln said that first, and best. A leader must make whatever horror exists concrete. Only then will people be able to break it apart.”; and

WHEREAS this is not humanity's first pandemic, nor will it be our last; and

WHEREAS citizens will be less likely to blame their government for future disasters caused by factors outside our control, but will have good reason to be critical if their government fails to plan, prepare and learn from past experiences; and

WHEREAS the Pandemic has truly tested our structures and processes for dealing with disaster, and in doing so has provided us an ideal opportunity to evaluate, to recognize what we did well and where we have an opportunity to improve; and

WHEREAS the Pandemic response has inspired various requests to review: the makeup of the County Health Board; Unified Command; the County Emergency Management

Plan; and County policy related to communications with the public; and

WHEREAS the people most qualified to provide feedback on our response are those who actively worked on answering the needs of the community; and

WHEREAS this year we will have several key members of our community retiring and we would like to hear from them before they become unavailable; and

WHEREAS the best way to determine the lessons to be learned from the Pandemic is to appoint a Special Commissioner to interview the key participants, to document the lessons learned, to better inform the community on how we can ensure the things we did right, what will be likely to occur again, where we need to improve, and what to avoid next time.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council establishes a County Commission to review our community's response to the COVID-19 Pandemic; and

BE IT FURTHER ORDAINED that ~~County Council shall select and~~ Whatcom County shall hire, an independent Special Commissioner ~~with the requisite qualifications (ideally a retired senior lawyer familiar with the county)~~ to 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-Sheriff~~ by ~~October 31st, 2021~~ June 30, 2022, and any recommendations incorporated into the next ~~to enable the county to incorporate their findings in future~~ updates to the county's ~~existing~~ emergency response plan.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-209

File ID:	AB2021-209	Version:	1	Status:	Held In Committee
File Created:	03/23/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Resolution		
Assigned to:	Council Committee of the Whole			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Resolution regarding permanent affordability of childcare in Whatcom County

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution regarding permanent affordability of childcare in Whatcom County

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
03/23/2021	Council	INTRODUCED	Council Committee of the Whole
04/06/2021	Council Committee of the Whole	HELD IN COMMITTEE	Council Committee of the Whole
04/06/2021	Council	HELD IN COMMITTEE	Council Committee of the Whole
04/20/2021	Council Committee of the Whole	FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S)	
04/20/2021	Council	DISCUSSED AND MOTION(S) APPROVED	
05/18/2021	Council Public Works & Health Committee	FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S)	
05/18/2021	Council	REFERRED TO COMMITTEE	Council Committee of the Whole
09/28/2021	Council Committee of the Whole	FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S)	

09/28/2021 Council

HELD IN COMMITTEE

Council Committee of the Whole

Attachments: Substitute Resolution for 10 12 2021, Substitute Resolution 10 12 2021_tracked changes,
Solutions proposed by Child & Family Well-Being Task Force

RESOLUTION NO. _____

REGARDING PERMANENT AFFORDABILITY OF CHILD CARE IN WHATCOM COUNTY

WHEREAS, the impact of COVID-19 on families and early childhood development has been significant, has placed families and children under great stress and providing quality child care is a key component to helping reduce the long-term impacts of our current crisis; and

WHEREAS, on February 4, 2020, Whatcom County Health Board adopted the Child and Family Action Plan, which states, "Whatcom County government has an important role to play in realizing the community's vision, which begins with making a commitment to promote the health and well-being of all children and families in Whatcom County, with a special focus on the critical first years of life, and families that experience disproportionate challenges due to social and economic factors, discrimination, and health issues"; and

WHEREAS, by adopting the Child and Family Action Plan, Whatcom County has committed to adopting "a "children and families first" approach for county policy and funding decisions, build county infrastructure to embed a focus on child and family well-being across county government, and contribute to community efforts to stabilize and expand access to child care and early learning opportunities"; and

WHEREAS, according to the 2019 Child Care Supply, Cost, and Demand in Whatcom County, "Child care is the greatest expense many families face" frequently exceeding the cost of housing for a young family of four or more; and

WHEREAS, according to The Mounting Costs of Child Care, in Washington State, 49% of parents found it difficult or very difficult to find, afford, and keep child care, 27% left school or training due to child care issues, and 9% were fired or let go due to child care issues; and

WHEREAS, according to The Mounting Costs of Child Care, in Washington State, as for employers, an estimated loss of \$2.08 billion due to turnover and missed work due to child care issues and an estimate of \$6.5 billion in direct costs due to employee child care issues; and

WHEREAS, while local employers have correctly identified housing affordability as a major constraint to attracting additional workers to the area; and

WHEREAS, child care affordability is actually a greater overall financial burden on low income families which, if reduced, would enable thousands of existing local residents (particularly women) to reenter the workforce, much sooner than it would take to build a substantial number of additional workforce housing units; and

WHEREAS, spending money on local child care facilities will have significant multiplier effect on the local economy and will create local construction jobs, raise family incomes by allowing a second parent to work, and increase the ability to pay the wages necessary to retain qualified childcare workers; and

WHEREAS, most of the increase in incomes will be spent locally which will increase incomes of other local businesses; and

WHEREAS, high quality child care promotes healthy child development, which is proven to reduce rates of incarceration, homelessness, and poverty in later life; and

WHEREAS, providing affordable, high quality childcare will have long-term benefits for

children and families, our economy, and society as a whole; and

WHEREAS, on May 18, 2021, the Whatcom County Council tasked the Child and Family Well-Being Task Force to provide recommendations for permanent solutions for child care affordability to the Council by September 30, 2021; and

WHEREAS, on September 28, 2021, the Whatcom County Council extended the deadline to October 15, 2021 to hear recommendations from the Child and Family Well-Being Task Force; and

WHEREAS, on October 12, 2021, the Child and Family Well-Being Task Force provided recommendations for permanent solutions to child care affordability to the Whatcom County Council.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the majority of the funds received through the H.R.1319 - American Rescue Plan Act of 2021 are to be allocated to permanent solutions for child care affordability as detailed in Exhibit A, Permanent Solutions for Child Care Affordability in Whatcom County, attached; and

BE IT FINALLY RESOLVED that the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, Sumas and the Nations of Lummi and Nooksack be invited to participate in funding of the land, buildings, and capital projects for child care facilities with H.R.1319 - American Rescue Plan Act of 2021 funds to allow for affordable child care in Whatcom County in perpetuity.

APPROVED this ____ day of _____, 20__.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

(Barry Buchanan), Council Chair

APPROVED AS TO FORM:

Karen Frakes (by email) 10/1/2021

Karen Frakes, Civil Deputy Prosecutor

Exhibit A:
Permanent Solutions for Child Care Affordability in Whatcom County

RESOLUTION NO. _____

REGARDING PERMANENT AFFORDABILITY OF CHILD CARE IN WHATCOM COUNTY

WHEREAS, the impact of COVID-19 on families and early childhood development has been significant, has placed families and children under great stress and providing quality child care is a key component to helping reduce the long-term impacts of our current crisis; and

WHEREAS, on February 4, 2020, Whatcom County Health Board adopted the [Child and Family Action Plan](#), which states, "Whatcom County government has an important role to play in realizing the community's vision, which begins with making a commitment to promote the health and well-being of all children and families in Whatcom County, with a special focus on the critical first years of life, and families that experience disproportionate challenges due to social and economic factors, discrimination, and health issues"; and

WHEREAS, by adopting the Child and Family Action Plan, Whatcom County has committed to adopting "a "children and families first" approach for county policy and funding decisions, build county infrastructure to embed a focus on child and family well-being across county government, and contribute to community efforts to stabilize and expand access to child care and early learning opportunities"; and

WHEREAS, according to the [2019 Child Care Supply, Cost, and Demand in Whatcom County](#), "Child care is the greatest expense many families face" frequently exceeding the cost of housing for a young family of four or more; and

WHEREAS, according to [The Mounting Costs of Child Care](#), in Washington State, 49% of parents found it difficult or very difficult to find, afford, and keep child care, 27% left school or training due to child care issues, and 9% were fired or let go due to child care issues; and

WHEREAS, according to [The Mounting Costs of Child Care](#), in Washington State, as for employers, an estimated loss of \$2.08 billion due to turnover and missed work due to child care issues and an estimate of \$6.5 billion in direct costs due to employee child care issues; and

WHEREAS, while local employers have correctly identified housing affordability as a major constraint to attracting additional workers to the area; and

WHEREAS, child care affordability is actually a greater overall financial burden on low income families which, if reduced, would enable thousands of existing local residents (particularly women) to reenter the workforce, much sooner than it would take to build a substantial number of additional workforce housing units; and

WHEREAS, spending money on local child care facilities will have significant multiplier effect on the local economy and will create local construction jobs, raise family incomes by allowing a second parent to work, and increase the ability to pay the wages necessary to retain qualified childcare workers; and

WHEREAS, most of the increase in incomes will be spent locally which will increase incomes of other local businesses; and

WHEREAS, high quality child care promotes healthy child development, which is proven to reduce rates of incarceration, homelessness, and poverty in later life; and

WHEREAS, providing affordable, high quality childcare will have long-term benefits for children and families, our economy, and society as a whole; and

WHEREAS, on May 18, 2021, the Whatcom County Council tasked the Child and Family Well-Being Task Force to provide recommendations for permanent solutions for child care affordability to the Council by September 30, 2021; and

WHEREAS, on September 28, 2021, the Whatcom County Council extended the deadline to October 15, 2021 to hear recommendations from the Child and Family Well-Being Task Force; and

WHEREAS, on October 12, 2021, the Child and Family Well-Being Task Force provided recommendations for permanent solutions to child care affordability to the Whatcom County Council.;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the majority of the funds received through the H.R.1319 - American Rescue Plan Act of 2021 are to be allocated to land, buildings, and capital projects for child care facilities to permanent solutions for child care affordability as detailed in Exhibit A, Permanent Solutions for Child Care Affordability in Whatcom County, attached; and

~~**BE IT FURTHER RESOLVED** that the land, buildings, and capital projects obtained through the funding from H.R.1319 — American Rescue Plan Act of 2021 be purchased, renovated/constructed as high-quality facilities to increase overall community capacity by 5,000 new child care slots, including two facilities that will provide extended hours to accommodate children of shift workers.~~

~~**BE IT FURTHER RESOLVED** that these facilities be permanently owned by the County (or a participating local jurisdiction) and made available for lease to qualified child care providers at no cost (or the lowest possible cost allowed by law) under the following guidelines:~~

- ~~1. Facility numbers and overall capacity shall be sized and located based on the population density of young families throughout the County and located in urbanized areas of the jurisdictions that contribute a proportionate amount of their H.R.1319 funds, and;~~
- ~~2. A minimum of 60% of the child care spots shall be prioritized for families at or below the ALICE (Asset Limited, Income Constrained, and Employed) threshold, and;~~
- ~~3. The fees the Lessee charges all parents shall be based on the state reimbursement rate, and;~~
- ~~4. To ensure the children are likely to be cared for by qualified staff the Lessee must pay employees at or above market wages, and;~~
- ~~5. To ensure the County does not create an ongoing liability to fund operating costs the Lessee shall pay a monthly amount to cover all normal operating costs, taxes, maintenance (including a capital cost allowance to fund major future repairs such as roof replacement), commensurate with what would be normal and customary if they were to lease the facility from a private commercial landlord.~~

BE IT FINALLY RESOLVED that the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, Sumas and the Nations of Lummi and Nooksack be invited to participate in funding of the land, buildings, and capital projects for child care facilities with H.R.1319 - American Rescue Plan Act of 2021 funds to allow for affordable child care in Whatcom County in perpetuity.

APPROVED this ____ day of _____, 20__.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

(Barry Buchanan), Council Chair

APPROVED AS TO FORM:

Karen Frakes (by email) 10/1/2021

Karen Frakes, Civil Deputy Prosecutor

Exhibit A:
Permanent Solutions for Child Care Affordability in Whatcom County



Permanent Solutions for Child Care Affordability in Whatcom County Drafted by The Child & Family Well-Being Task Force

The Child & Family Well-Being Task Force was honored by the request from County Council to consider and respond to the Resolution¹ (Permanent Affordability of Child Care in Whatcom County (2021)) proposed by Councilmembers Browne and Frazey. We also deeply appreciate and support the Resolution's recognition that, "the impact of COVID-19 on families and early childhood development has been significant, has placed families and children under great stress and providing quality child care is a key component to helping reduce the long-term impacts of our current crisis."

In our reading of the Resolution, and in subsequent conversations with the authors, we discerned several key principles which informed the intent of the proposal:

- To safeguard American Rescue Plan Act (ARPA) funds from being thinly spread across numerous, low-impact projects.
- To create permanent, brick and mortar facilities, rather than temporarily expand assistance.
- To use one-time funds on one-time expenses.
- To have a lasting impact, and leave a legacy of affordable child care for many years to come.

The solution proposed in the Resolution is to allocate a majority of the County's ARPA funds "to land, buildings, and capital projects for child care facilities." While the proposed approach is responsive to the key principles listed above, initial feedback to the Council from several community stakeholders revealed concerns over whether such a focused spending proposal would be truly responsive to needs of Whatcom County's child care sector, which is currently in crisis. It is in this context that the Council referred the proposed Resolution to the Child & Family Well-being Task Force for review and recommendations.

¹ <https://whatcom.legistar.com/View.ashx?M=F&ID=9262003&GUID=9A30CE27-4388-4D70-98D0-D37D63A47A40>

Our Process

In May, the request for a response to the draft Resolution was delivered to the Task Force. The Task Force then decided to have the Resources and Funding Workgroup develop the recommendations, and then bring them to the Task Force for discussion and approval. This Workgroup began meeting in June, and developed a timeline and plan to develop our response. Agreements were made by the group to use four data sources in the development of our response:

- Information gathered from national, state, and local experts in the field
- Feedback from the original respondents to the draft child care Resolution
- Feedback from the fellow Task Force members
- Feedback from community members, with a focus on child care providers and parents, and a special emphasis on those who identify as people of color

It is our shared value that both technical expertise and lived experience are important to the development of recommendations. We developed initial categories and subcategories based on information gathered from the local child care coalition, publications about the use of ARPA funds for child care, consultation with the Children's Funding Project, and a review of the initial feedback to Council. Our group then gathered broad based community input about the specific priorities to support child care in our community. We created an informal survey (not meant to be a scientific study) to gain insight as to what community members believe is missing from our current child care system, what needs they would prioritize first, and why they had those opinions. We provided a specific opportunity for our fellow task force members to respond. In total, we collected survey responses from 230 people, 11% of whom identified as Black, Indigenous, People of Color (BIPOC). Of those who responded, 113 people identified primarily as a parent/caregiver, 17 people identified as community business owners, 22 identified as child care teachers, 16 identified as child care operators, and 4 identified as in-home child care providers. Other stakeholder groups heard from were non-profit organizations, government, and community coalitions. The qualitative data gathered helped shape our response, and it also allowed more of our community members to be a part of the overall process.

Overwhelmingly, respondents in all categories felt like our outlined priority areas (discussed below) are what is needed right now to support child care providers, teachers, and consumers. Additionally, we saw that those in the child care field and parent/caregiver respondents recognized that the most pressing need is to stabilize the child care workforce through retention and development efforts.

Creating a Community Where All Children and Families Thrive

The Whatcom County Child and Family Action Plan² passed in 2020, which gave rise to our task force, states our community has a:

² <https://www.whatcomcounty.us/DocumentCenter/View/49297/Child-and-Family-Action-Plan---January-2020>

Shared vision for the future in which all children are ready to learn and where families are strong, stable, and supported from the start; and communities are supportive places for children and families to live, learn, work, and play. Families in Whatcom County, especially those with low/no incomes, racial/ethnic minorities, and those with members who have special health or behavioral healthcare needs, face significant challenges in finding affordable child care so they can attend school and work.... For immigrant families and those living in rural areas, the challenges for meeting children's and families' needs are even greater.

When considering both the quantity of funds to allocate, and how to allocate them, we believe it is critical to focus on whether the new opportunities create true situational fairness and equal opportunity in our community. Any plan using ARPA dollars should meaningfully include the voices of financially impacted families and struggling child care teachers. We, the Task Force, appreciate being asked to weigh in, since we are a group that has been created to represent diverse perspectives. We speak with a shared voice in making these recommendations, and hope we will continue to have a consequential voice in fund allocation and distribution plans moving forward.

As a group representing a myriad of lived experiences and expertise, we want to emphasize that it will be critical to use these funds to address systemic inequities built into the child care industry over centuries, and rooted in historic reliance on the undervalued work of BIPOC women as child care providers and consumers. With careful, intentional, design; and guidance from families, agencies, and child care providers; our County government can use ARPA funding in ways that reduce barriers for providers, children, and families. It is imperative to intentionally meet the needs of children and families from diverse backgrounds and experiences when building this foundation for the future.

Measuring Success

There are several ways to measure the ongoing success of the proposed child care programs funded by ARPA. An evaluative process would ensure services and supports are benefiting all children and families in their search for quality child care. Each priority area has suggested data indicators for analysis and adaptation for continuous quality improvement. All data indicators should be disaggregated by factors such as race, income, health care needs of the child, and geography; to guarantee that the enhancements to the child care industry are truly equitable. Ultimately, the overall success of these investments should be measured by family economic stability and kindergarten readiness, with the elimination of disparities by race.

Prioritization

Feedback received from providers and community members indicated overwhelmingly that workforce stabilization is the top priority.

Substantial improvement in workforce stability is a prerequisite for the success of investments in other areas such as capacity building, affordability, family support, and centralized infrastructure. All proposed areas of investment are interconnected, and investments in any one of these areas would have only limited impact if not accompanied by parallel investments supporting the other areas.

We strongly urge the Council to immediately dedicate a large portion of ARPA funds to child care, with an emphasis on supporting child care workers. We believe the amount proposed in the Resolution (\$22.25 million) would ensure continued availability of quality child care, which the pandemic has clearly illustrated is key to economic vitality and family success in our community. Information is evolving regarding (1) what kinds of investments are being made at the state and federal level, and (2) the eligibility of ARPA funds for various uses. As such, adjustments in funding allocation sources within the priority areas described below, may be necessary after the overall child care allocation is made. The best use of ARPA funds, maximizing support to the child care industry, along with leveraging other sources of funding, can be determined by the County and community going forward.

We have identified five priority areas for funding based on our understanding of child and family well-being, current work in our community specific to the child care industry, and a study of recommendations from state and national experts:

- Priority A:** Increase child care workforce stabilization, development, and compensation
- Priority B:** Increase child care capacity
- Priority C:** Increase child care affordability
- Priority D:** Increase family supports and early childhood well-being
- Priority E:** Develop County infrastructure for child and family well-being coordination, evaluation and planning

Priority A

Increase Child Care Workforce Development and Compensation

Adding more qualified teachers to the workforce, and retaining the teachers we have, to meet the full demands for child care in our community.

Why Invest Now

We can build new facilities or expand existing ones, but without additional child care workers, there will be no additional child care spots. Child care is in short supply, in part, because of the lack of child care workers. Child care workers face tremendous stress and health risks, without adequate compensation or benefits, for the level of education and certifications required for their work. Market conditions dictate that most child care workers are compensated so poorly that they have to rely on

public assistance programs and can't afford the basic medical care or mental health services they need. Furthermore, the burden of this work falls disproportionately on BIPOC women, compounding societal inequities. ***Although all of the priorities listed are important, both the Task Force and community survey respondents agreed, workforce stabilization is the most urgent priority.***

Potential Strategies

- Offer retention bonuses directly to staff, to reward longevity and encourage staying in the industry.
- Provide benefits for child care workers: offering retirement, healthcare, and paid time off; to both full and part-time workers.
- Supplement hourly wages: increase child care workers wages up to a living wage, that is consistent with the level of education and certifications necessary for their roles.
- Expand classroom supports: invest in programs which relieve workplace stressors for child care workers, such as supportive services for behavioral and mental health.
- Provide centralized administrative support for small child care providers. By sharing administrative services, providers can split costs and free-up time of overburdened administrators.
- Invest in workforce development: encourage people to enter the field by offering scholarships, creating "earn and learn" programs, offering guaranteed job placement, and funding continuing education for current providers

Success Metrics

- Child care employee retention
- Increased and sustained classroom capacity (teachers are hired and classrooms kept open)
- Number of open teacher positions

Priority B

Increase Child Care Capacity

Adding more child care spots by both expanding the capacity of current programs, and supporting the growth of new programs.

Why Invest Now

In order to meet Whatcom County's anticipated child care needs, the amount of currently available child care slots for children under 5 will need to triple by the year 2025.³ That is 5,768 new spots. Investment in this area should begin now, because opening new child care centers and earning credentials for new child care providers are time-consuming processes that often take years.

³ <https://whatcomcounty.us/DocumentCenter/View/58373/COVID-19-Community-Health-Impact-Assessment-July-2021>

Potential Strategies

- Subsidize lending: create a subsidized loan program specific to the child care industry in Whatcom County.
- Offer grants for facility startup and/or expansion. Funding could be given to child care operators on a ratio of dollars to new spots created.
- Build new, expand existing, or re-purpose buildings for child care. This could involve buying land, building new child care facilities, and/or renovating current facilities to reduce the overall cost of running a child care facility.
- Hire a child care facility specialist within the city/county planning departments. Create a dedicated position within the city/county to assist in navigating the regulations and obstacles in new construction permits.
- Offer financial planning and business modeling services to child care centers, providing assistance around financing and business sustainability.
- Offer tax credits for family-based providers, by establishing a property tax credit for families who operate child care in their homes.
- Provide down payment grants for family-based providers. People who operate child care facilities in their homes could qualify for interest-free, forgivable loans to assist with down payments for purchasing homes.

Success Metrics

- Increase in the total number of child care slots
- Increase in the number of child care slots in rural areas
- Increase in child care slots during non-traditional hours
- Increase in the number of child care slots for children from birth to age 2.
- Decrease in wait times for acceptance to child care programs

Priority C

Increase Child Care Affordability

Reducing the cost of child care for families.

Why Invest Now

When child care costs take up too much of a household's budget, other basic needs cannot be afforded, creating stress and eliminating the possibility of economic security. As noted in recent local reports, including the COVID Community Health Impact Assessment and the [Child Care Demand Study](#), nearly half of families report that it is very difficult to maintain and afford child care. Families not receiving a subsidy often pay more than 30% of their income on child care. These numbers are compounded when combined with intersectional factors such as race, socioeconomic background,

ability, orientation, and rural location.⁴ To increase economic security for families who are most impacted by the pandemic, reducing the cost of child care is vital. The Washington State Fair Start for Kids Act⁵ addresses some of these issues, but many of the benefits won't go into effect until 2023, and families need support now.

Potential Strategies

- Expand paid family leave for parents of infants locally. Funds could be used to supplement the Washington State Paid Family Leave program and extend the benefit for the first year of a child's life. If parents could stay home for a child's first year, it would reduce the need for infant care, remove some stress on the overall child care system, and improve household budgets by removing a major cost.
- Offer subsidies for Asset Limited, Income Constrained, Employed (ALICE⁶) families to supplement existing state programs. By expanding state subsidies to include ALICE families that work at low-earning jobs (until the Fair Start for Kids Act begins), our community will continue to incentivize work while improving economic security for families, and improving the economy of our entire community.
- Create an emergency child care program and/or site. All families experience crises that result in a temporary need for child care. By creating an emergency child care program, families could manage a crisis, attend to their health and/or employment, and regain stability for their family more quickly.

Success Metrics⁷

- Number of families spending more than 7% of their budget on child care
- Percent of household income that ALICE families are spending on child care
- Reduce the racial disparity of kindergarten readiness

Priority D

Increase Family Supports for Early Childhood Well-Being

Focusing on the overall well-being of children in their early years (including mental, emotional, and physical wellness) creates a foundation for healthy individual growth, and contributes to successful communities. Early experiences shape future outcomes, and are pivotal to human development.

⁴ https://www.k12.wa.us/sites/default/files/public/wakids/materials/pubdocs/WaKIDS1920OnePageFinal_20200714.pdf

⁵ <https://www.governor.wa.gov/news-media/inslee-signs-fair-start-kids-act-expand-access-child-care>

⁶ <https://unitedforalice.org/washington>

⁷ <https://static1.squarespace.com/static/5d12727cc999d40001434e6e/t/614ca40a069dd47614e63140/1632412686072/Fiscal+Map+for+Licensed+Child+Care+in+Whatcom+County+-+updated+July+31+2021.pdf>

Why Invest Now

In Whatcom County, families with young children who need additional support face a variety of compounding challenges: long wait times for services, services not available locally, complex case management difficulties, and finding child care during appointments. For over a decade, both families and service providers have expressed a need for a centralized location where multiple services for children and their families can be located.

Potential Strategies

- Support the development of family resource centers. Family Resource Centers can efficiently house a variety of healthcare and family support services under one roof. Families are able to conveniently access needed screenings, services, and supports from multiple agencies without traveling to many different locations. They can also provide resource referrals for other community based services.
- Expand peer support programs: peer supports are consistently recognized as an approach to center families, build racial equity, and save costs throughout the system; and could be added in health, education, social services, and government.

Success Metrics

- Increase in the number of resource centers
- Increase in the number of peer support programs

Priority E

Develop County Infrastructure for Coordination, Evaluation, and Planning

As funding sources evolve, increased infrastructure is needed to coordinate efficient and effective use of public and private funds, so that community goals can be reached, without work being duplicated.

Why Invest Now

Infrastructure is essential to make wise use of funds intended to support Whatcom County children and families, and will be needed to successfully implement any of the above-listed strategies.

With the large increase in funding from ARPA, a coordinated infrastructure is needed to administer funds, coordinate stakeholders and partners, develop accountability structures, and monitor and evaluate the impact of funds on desired outcomes. This infrastructure needs to be specific to child care investments, as well as for overall child and family well-being. The need will be acute during the investment of ARPA funds, and will be on-going. Communities that invest in staffing and resources across agencies and sectors, are able to make investments that make a difference for local children

and families. This need was first outlined in the Child and Family Action Plan,⁸ and continues to have broad-based support as an essential ingredient for prioritizing children and families within the community.

Potential Strategies

- Create a Child Care Funding Coordinator position. This role would be responsible for identifying funding sources and funding requirements, coordinating with partners, overseeing development of contracts with community entities, tracking use of funds, collecting data to analyze effectiveness, and identifying opportunities to leverage with other funds. This is also Ensure accountability to the county and community.
- Establish an Office of Family and Child Well Being. On-going leadership and capacity is needed at the county level to prioritize young children and their families. Besides committing resources, cross-agency and cross-sector efforts need to be made. Key capabilities include determining appropriate investments, managing funds and evaluating impacts.

Success Metrics

- The elasticity of the system as measured by unduplicated numbers on waitlists
- Held accountable to specific, measurable outcomes
- Resourced (staffed & funded) commensurate with its goals

Allocation: An Example

The original proposal from Councilmembers Browne and Frazey called for bold action: allocating half of the county's ARPA funds (\$22.25M) to address the challenges of child care throughout our community. The task force was heartened by that, and urges the council and Executive Sidhu to act in that same bold spirit because the challenges before us call for action, and the consequences of inaction cross all sectors of our economy.

Rather than investing into a single intervention, we are hoping to see a well-rounded set of interventions that alter the landscape of child care in a holistic way.

Workforce stabilization is the most urgent priority that we identified, and should likely see the largest investment. With more exploration of the potential costs and returns of the other priorities, our recommendations could expand to include additional strategies. We suggest focusing attention on workforce stabilization, with the aim of significantly expanding dollars allocated to this priority.

Below is an example of how ARPA funds could be deployed on specific programs across the five priority areas, with some speculation about the good such investments might achieve. We wanted to

⁸ <https://www.whatcomcounty.us/DocumentCenter/View/49297/Child-and-Family-Action-Plan---January-2020>

share what we learned, even though our knowledge across these areas is asymmetrical. We were limited by our timeline to produce these recommendations, and strive to be candid about what we learned and what we didn't have time to fully explore. That asymmetry should not be taken as a signal of prioritization. Some of these areas (capacity building) are easier to research than others (affordability). Wage subsidies, one of the most popular ideas about workforce stabilization in our community outreach, emerged late in our process.

One Way to Allocate \$22.25M in ARPA Funds Across 5 Priorities

- *\$2.6M for Retention Bonuses*— One of the leading ideas to encourage and retain the existing workforce is retention bonuses. An investment of this size would fund retention bonuses of \$1,000 (twice yearly, for two year), for the 650⁹ workers currently employed at licensed centers. If new staff is hired as a result of the capacity expansion efforts described below, the total program cost would increase in proportion to the amount of new capacity added.
- *\$7M for Attracting a Community Development Financial Institution (CDFI)*— ARPA funds administered by a CDFI could be used to replicate the success LIIF had in Washington DC.¹⁰ Assuming the same rate of return, this investment should yield 4,117 new child care slots, roughly three-quarters of the projected need for 2025.¹¹
- *\$7M to Address the Benefits Cliff*— Child care subsidies from the Division of Child, Youth and Families (DCYF) are only available to families with income 200% of federal poverty level. However, we heard from a number of families who are ineligible for help, but still find it difficult to afford the child care they need. The subsidy levels will be adjusted substantially by the Fair Start for Kids Act, but the changes do not go into full effect until 2024. The City of Seattle is funding a pilot with ARPA dollars to implement those changes early,¹² and Whatcom County could do the same. Assuming this program provides full subsidies for families who are not eligible for any support today, this investment could make care accessible to 480 children for a year.
- *\$2M for Family Resource Centers*— Conversations at both the state and local levels acknowledge the good Family Resource Centers could accomplish.¹³ The demands of COVID have stalled local efforts, but ARPA funds could be used to secure two or more facilities within Whatcom County for this purpose.
- *\$3M for Coordinating Infrastructure*—All of the initiatives listed would be easier to achieve with a dedicated department or office within the County Government to design programs, administer funds, convene stakeholders, and attract additional investments. While this is an ongoing expenditure, which makes its ARPA eligibility uncertain, the yearly cost would be modest. This level of investment could sustain such a department for 4 years. Other groups

⁹ Estimated by David Webster of Opportunity Council based on the licensed capacity in Whatcom County.

¹⁰ <https://www.liifund.org/news/post/liif-exceeds-goal-in-bringing-1k-child-care-slots-to-d-c/>

¹¹ <https://whatcomcounty.us/DocumentCenter/View/58373/COVID-19-Community-Health-Impact-Assessment-July-2021>

¹² <http://www.seattle.gov/education/for-parents/child-care-and-preschool/child-care-assistance-program>

¹³ <https://www.childwelfare.gov/topics/preventing/prevention-programs/familyresource/>

within our community have worked to envision what such a unit could accomplish, and how it could be sustainably funded for the long-term. Rather than duplicate their efforts, we would just acknowledge that the existence of such a department would make any ARPA-funded projects more effective & efficient.

Implementation

Our research identified many additional local efforts working to address this urgent problem. In addition to the Task Force's continued involvement, we recommend ongoing planning with organizations such as The Whatcom Child Care Coalition, The Center for Child Care Retention and Expansion, and the Healthy Whatcom Early Learning and Child Care team. Communications with the Task Force and these organizations, along with outreach to child care providers and to families with young children, will be essential in creating the programmatic details necessary for implementation.

Concluding Remarks

The most lasting investment we can make as a community is an investment in our people. The proposed Resolution recognizes this, by making child care the top priority for Whatcom County's ARPA funds. We recommend the County Council broaden the scope of this investment, and take action to stabilize and grow the child care workforce as your first priority.

We understand the appeal of investing in physical buildings that could serve as a tangible and permanent legacy. At the same time, any child care investment strategy must center the child care workforce crisis or it will not succeed. Over the past year and a half, approximately a dozen licensed child care operators have shut their doors, and classrooms at functioning centers often go unused due to staff shortages. Whenever a teacher gets sick, a dozen families have to scramble to make arrangements, as there are no substitutes to fill in. Employers are losing some of their best workers, because there is no one to look after the kids.

It is important to recognize that there are a lot of unanswered questions about investing in the workforce. Who, how, and how much? Our Task Force, along with numerous community partners, are prepared to take them on and offer solutions. As our County Government invests in quality child care, we know that families will be strengthened and the whole community will find benefit.

The County Council has already demonstrated leadership and challenged conventional thinking. Child care is a new opportunity for Whatcom County Government to play a significant role in supporting our entire community and the underlying supports for a healthy economy. We appreciate your bold vision, and we assure you that your constituents support your effort to prioritize child care and help families thrive in Whatcom County. Thank you for considering our recommendations.



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2021-076

File ID:	MIN2021-076	Version:	1	Status:	Agenda Ready
File Created:	09/29/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Committee of the Whole Executive Session for September 28, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Draft Minutes Committee of the Whole Exec Sep 28 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, September 28, 2021

9 AM

Virtual Meeting

**VIRTUAL MEETING - ENDS BY 9:55 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: Chris Quinn and Karen Frakes.

Buchanan stated that discussion of agenda item one and two may take place in executive session pursuant to RCW 42.30.110(1)(b) and RCW 42.30.110(1)(i). Executive session will conclude no later than 9:55 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 9:55 a.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Browne.

The motion carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

Nay: 0

Out of the Meeting: 1 - Kershner

Clerk's note: Kershner joined shortly after the vote.

1. AB2021-531 Discussion regarding potential property sale [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.

Committee Discussion and Recommendation to Council

1. AB2021-156 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 [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)] (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

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 9:58 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
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Agenda Bill Master Report

File Number: MIN2021-077

File ID:	MIN2021-077	Version:	1	Status:	Agenda Ready
File Created:	10/01/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Committee of the Whole for September 28, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Draft Minutes Committee of the Whole Sep 28 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, September 28, 2021

3:05 PM

Virtual Meeting

**VIRTUAL MEETING - ENDS BY 5 P.M., MAY BEGIN EARLY (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 13:24 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

Announcements**Committee Discussion**

1. AB2021-395 Discussion and periodic update of the Shoreline Management Program

Donovan spoke about whether this item should be discussed in the Natural Resources Committee.

Cliff Strong, Planning and Development Services Department, briefed the Councilmembers and answered questions about the schedule for discussions on particular subjects, and about how to access the Shoreline Environment Designation map (Exhibit G) and a new conservancy designation on the map as defined in Chapter 11 (Exhibit B).

This agenda item was DISCUSSED.
2. AB2021-482 Presentation and discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities

Tyler Schroeder, Executive's Office, briefed the Councilmembers. He and Councilmembers discussed whether there is money for projects they have not thought of yet, waiting until the Child and Family Well-Being Task Force brings their recommendations forward, the timeline going forward and when formal requests would be coming to Council, whether the Regional Water Infrastructure funding should be from the Conservation Futures Fund, money allocated to Blaine infrastructure, reserving the funds for projects in more rural areas that do not have other jurisdictions that can represent them, using American Rescue Plan Act Fund (ARPA) funds to compensate those who lose their job because they choose not to be vaccinated or who suffer adverse events or any effects from the vaccine in order to keep their job, what first Additional Service Requests (ASRs) might be brought to Council, whether AB2021-513 needs to be authorized tonight in order for the Administration to bring the Laurel/Forest request to Council, which ARPA "buckets" that request would come out of and how it is related to childcare, and whether the transfer of property to the

Opportunity Council should be for value or no value.

This agenda item was DISCUSSED.

3. AB2021-541 Discussion of implementing the 2021 Whatcom County Climate Action Plan
Chris Elder, Public Works Department, briefed the Councilmembers.

He and Ellyn Murphy, Climate Impact Advisory Committee, answered where the position that would be hired to implement the plan would be housed, where the electricity comes from for these initiatives to move toward one hundred percent electrification of buildings, and whether there will be enough electricity to meet the needs.

Elder spoke about the next steps going forward.

This agenda item was DISCUSSED.

Committee Discussion and Recommendation to Council

1. AB2021-209 Resolution regarding permanent affordability of childcare in Whatcom County
Frazey answered whether this is something they want to address today before they get a report from the Child and Family Well-Being Task Force.

Judy Ziels, Health Department, requested a deferral of this item to October 12, 2021.

Dana Brown-Davis, Clerk of the Council, answered what is needed from the Committee today.

Frazey moved to extend the deadline in the affordability of childcare resolution to October 15. The motion was seconded by Browne.

The motion carried by the following vote:

Aye: 6 - Frazey, Kershner, Browne Buchanan, Byrd, and Donovan

Nay: 0

Abstain: 1 - Elenbaas

Cathy Halka, Council Legislative Analyst, updated the Councilmembers on the substitute resolution.

This agenda item was FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S).

2. AB2021-525 Discussion and request for Council motion regarding request for proposals (RFP) for independent review of the response to the COVID-19 pandemic

Browne briefed the Councilmembers and they discussed the item.

Browne moved to recommend approval of the document titled Substitute Draft Scope for 9.28, listed as attachment #3 on this file in the Legislative Information Center. The motion was seconded by Kershner.

The motion carried by the following vote:

Aye: 7 - Frazey, Kershner, Browne, Buchanan, Byrd, Donovan, and Elenbaas,

Nay: 0

This agenda item was FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S).

3. AB2021-528 Resolution approving the Water District 13 Small Water System Management Plan
Dana Brown-Davis, Clerk of the Council, briefed the Councilmembers.

Byrd moved and Frazey seconded that the Resolution be RECOMMENDED FOR APPROVAL. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 4:17 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: MIN2021-078

File ID:	MIN2021-078	Version:	1	Status:	Agenda Ready
File Created:	10/01/2021	Entered by:	KFelbing@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Regular County Council for September 28, 2021

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Draft Minutes Council Sep 28 2021

Whatcom County Council

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



Minutes - Draft Minutes

Tuesday, September 28, 2021

6 PM

Virtual Meeting

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010), AGENDA
REVISED 9.28.2021**

COUNCILMEMBERS

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

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:01 p.m. in a virtual meeting.

ROLL CALL

Present: 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, and Kathy Kershner

Absent: None

ANNOUNCEMENTS

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

COUNTY EXECUTIVE'S REPORT

There was not an executive report.

FLAG SALUTE

MINUTES CONSENT

Donovan moved to accept the minutes consent items. The motion was seconded by Frazey (see votes on individual items below).

1. [MIN2021-071](#) Joint Health Board / PHAB for September 7, 2021

Donovan 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. [MIN2021-072](#) Committee of the Whole for September 14, 2021

Donovan 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. [MIN2021-073](#) Regular County Council for September 14, 2021

Donovan 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. [MIN2021-074](#) Committee of the Whole Executive Session for September 21, 2021

Donovan 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

5. [MIN2021-075](#) Water Work Session for September 21, 2021

Donovan 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. [AB2021-500](#) Ordinance adopting amendments to the Whatcom County Zoning Code Relating to Temporary Homeless Facility Regulations

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Browne moved and Frazey seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Personius answered a question about a previously made amendment about public entities being able to be sponsors and stated the change is reflected in the definition for sponsors on page 11 of Exhibit A under a new section D of Chapter 20.97.

Browne'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 2021-055

2. AB2021-414 Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

This agenda item was WITHDRAWN.

3. AB2021-503 Resolution authorizing the sale of surplus personal property pursuant to WCC 1.10
Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Byrd moved and Frazey seconded that the Resolution 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 2021-038

4. AB2021-508 Ordinance for Installation of a Stop Sign on Northshore Road
Jim Karcher, Public Works Department, stated he was available for questions.

Buchanan opened the Public Hearing and the following person spoke:

- Bruce Parelskin

Hearing no one else, Buchanan closed the Public Hearing.

Frazey moved and Byrd seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

Enactment No: ORD 2021-056

5. AB2021-515 Resolution in the matter of the Whatcom County Six-Year Transportation Improvement Program (STIP) for the years 2022 through 2027

Jim Karcher, Public Works Department, stated he did not have a report.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Byrd moved and Frazey seconded that the Resolution 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 2021-039

6. 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)

Kraig Olason, Public Works Department, stated he did not have a report.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Donovan moved and Byrd 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 2021-040

7. AB2021-359 Request for public comment related to the Whatcom County Wildlife Advisory Committee's recommendation regarding Nomination of Species of Local Importance and request for Council motion to designate four wildlife species as "Species of Local Importance"

Amy Dearborn, Planning and Development Services Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following people spoke:

- Wendy Harris
- Dena Jensen

Hearing no one else, Buchanan closed the Public Hearing.

Donovan moved to accept the Wildlife Advisory Committee's recommendation to designate the Western Toad (also known as boreal toad) (*Anaxyrus* [formerly *Bufo*] *boreas*), the Coastal Tailed Frog (*Ascaphus truei*), Townsend's Big-Eared Bat (*Coryrhinus townsendii*), and the Elk (*Cervus elaphus*) as species of local importance. The motion was seconded by Frazey.

Councilmembers and staff discussed the motion.

Robert Waddell, Washington Department of Fish and Wildlife, spoke about issues with elk.

Kershner moved to amend the motion to remove the Elk from the list. The motion was seconded by Browne.

The motion to amend carried by the following vote:

Aye: 4 - Browne, Buchanan, Byrd, and Kershner

Nay: 3 - Donovan, Elenbaas, and Frazey

Donovan's motion that species be APPOINTED AS AMENDED carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

OPEN SESSION (20 MINUTES)

The following people spoke:

- Sarah (last name not given)
- Cutzi Jobes
- Dena Jensen
- Kathy Sabel
- David Spring

- Lonnie Brogan
- Ken Domorod
- Tyler Zmolek
- Lindy McDonough
- Wendy Harris
- Melissa Wisener
- Misty Flowers
- Markis Dee Stidham
- Shannon Wallace
- Jared Petterson
- Gail Adderley
- Enoch Mann
- Sarah Rose
- Shean Halley
- Nancy Bergman
- Natalie Chavez
- Jean Purcell
- Rebecca Wilson
- Chad Butenschoen
- Stacey Dailey
- Kamal Bhachu

Councilmembers discussed a point of order about speakers making mention of candidacy for office and the following people answered questions:

- Dana Brown-Davis, Clerk of the Council
- Karen Frakes, Prosecuting Attorney's Office

Open session comments continued with:

- Kamal Bhachu
- Shaz
- Louis Burrell
- Tawni Hickman
- Mary Stidham
- Hannah Ortis
- Desiree Espericueta
- Renee Norton

Hearing no one else, Buchanan closed the Open Session.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Browne reported for the Finance and Administrative Services Department and *moved* to approve item numbers 1 and 3-11.

Byrd moved to also remove item number 9 (AB2021-542) from the Consent Agenda.

Browne amended his motion and *moved* to approve Consent Agenda item numbers 1, 3, 4, 5, 6, 7, 8, 10, and 11.

Councilmembers discussed the motion.

See motion and votes on each individual item below.

1. [AB2021-488](#) Request authorization for the County Executive to execute a contract amendment between Code Publishing Company and Whatcom County for legal code publishing services

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. [AB2021-513](#) Request authorization for the County Executive to enter into a transfer option agreement between Whatcom County and Opportunity Council for the property located at Laurel and Forest streets for the appraised amount of \$1,230,000

See action on this item below after the Consent Agenda.

See action on this item below after the Consent Agenda.

3. [AB2021-517](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology for solid waste planning and implementation activities, in the amount of \$732,835

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. AB2021-526 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Commerce for FY18 Justice Assistance Grant, in the amount of \$155,053.00

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. AB2021-529 Request approval for the County Executive to enter into an agreement with Washington State Recreation and Conservation Office in order to secure matching funds for the VanderWerff Agricultural Conservation Easement through the Conservation Easement Program

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

6. AB2021-530 Request approval for the County Executive to enter into an agreement with the Washington State Recreation and Conservation Office in order to secure matching funds for the Moors Forestry Conservation Easement through the Conservation Easement Program

Browne reported for the Finance and Administrative Services Committee and moved that the Agreement 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. AB2021-532 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Children, Youth, and Families for high quality home visiting services to vulnerable families, in the

amount of \$355,339

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. [AB2021-540](#) Request approval for the County Executive to enter into an agreement with the United States Department of Interior, Geological Survey in the amount of \$145,225 (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 BY CONSENT. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

9. [AB2021-542](#) Request approval for the County Executive to enter into an interagency agreement between the State of Washington Puget Sound Partnership and the Whatcom County Flood Control Zone District, acting as the fiscal agent for the Local Integrating Organization (LIO) to coordinate the County LIO (Council acting as the Flood Control Zone District Board of Supervisors)

See action on this item below after the Consent Agenda.

See action on this item below after the Consent Agenda.

10. [AB2021-554](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Youth Services to support operations at the Ground Floor Day Use Center in the amount of \$10,000 for a total amended contract amount of \$145,000

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

11. [AB2021-557](#) Request authorization for the County Executive to enter into a contract amendment

between Whatcom County and Catholic Community Services to provide behavioral health support at Francis Place and other permanent supportive housing programs in the amount of \$60,757 for a total amended contract amount of \$306,173

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. AB2021-562 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and G6 Hospitality Group to extend the agreement for an additional three months

See action on this item below after the Consent Agenda.

See action on this item below after the Consent Agenda.

2. AB2021-513 Request authorization for the County Executive to enter into a transfer option agreement between Whatcom County and Opportunity Council for the property located at Laurel and Forest streets for the appraised amount of \$1,230,000

Browne reported for the Finance and Administrative Services Committee and stated that this item was forwarded to Council without a recommendation from the committee.

Donovan moved and Frazey seconded that the Contract be AUTHORIZED.

Tyler Schroeder, Executive's Office, discussed with Councilmembers what happens if the Councilmembers vote no on this item, and Councilmembers discussed the motion, whether the cost of the property should be reduced to cover the cost of relocating the Washington State University (WSU) Extension facility, whether approving this right now helps the Opportunity Council's project to go forward, which option would help the Opportunity Council with tax credits, and what the \$1.2 million in the general fund would be allocated for.

Donovan's motion that the Contract be AUTHORIZED carried by the following vote:

Aye: 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

Nay: 1 - Byrd

Absent: 0

9. AB2021-542 Request approval for the County Executive to enter into an interagency agreement between the State of Washington Puget Sound Partnership and the Whatcom County Flood Control Zone District, acting as the fiscal agent for the Local Integrating Organization (LIO) to coordinate the County LIO (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: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

12. AB2021-562 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and G6 Hospitality Group to extend the agreement for an additional three months

Browne reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Kathleen Roy, Health Department, answered what happened to the plan to have a regional facility that was paid for by the State.

Browne's motion that the Contract be AUTHORIZED carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. AB2021-512 Ordinance amending the 2021 Whatcom County Budget, request no. 14, in the amount of \$315,947

Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2021-057

2. 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)

Browne reported for the Finance and Administrative Services Committee and **moved** that the Resolution be approved.

The motion carried by the following vote:

Aye: 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

Nay: 0

Clerk's note: This vote on this item was reconsidered. See final vote on this item below.

This agenda item was voted on 7-0 and then RECONSIDERED later in the meeting.

Enactment No: RES 2021-041

The vote on this item was reconsidered. See final vote on this item below.

3. AB2021-527 Request approval for the County Executive to enter into an agreement with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table in the amount of \$190,000 (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.

Elenbaas stated that he would like to vote again on the previous item (AB2021-522) so Councilmembers went back to that item (see vote on AB2021-527 below).

See vote on this item below.

2. 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)

Elenbaas moved to reconsider AB2021-522. The motion was seconded by Byrd.

The motion to reconsider carried by the following vote:

Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Kershner, and Browne

Nay: 0

Browne moved and Buchanan seconded that the Resolution (FCZDBS) be APPROVED.

The following people answered questions about what the money for this item would be used for and why this does not include some of the stakeholders and water users:

- Paula Harris, Public Works Department
- Tyler Schroeder, Executive's Office

Browne's motion that the Resolution (FCZDBS) be APPROVED carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: RES 2021-041

4. AB2021-533 Request approval for the County Executive to enter into an agreement with Kramer Consulting, Inc. for facilitation services for the WRIA 1 Drainage Based Management Pilot Project in the amount of \$100,000 (Council acting as the Flood Control Zone District Board of Supervisors)

Browne read this into the record then they realized that they skipped AB2021-527 so they stopped and went to that item.

See vote on this item below.

See vote on this item below.

3. AB2021-527 Request approval for the County Executive to enter into an agreement with Cascadia Policy Solutions, LLC, for the purpose of developing and implementing a collaborative water solutions table in the amount of \$190,000 (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.

Donovan moved to that this item be HELD IN COMMITTEE. The motion was seconded by Byrd.

Councilmembers discussed the motion.

Donovan stated he would like to hold it for two weeks.

Donovan's motion that the Contract (FCZDBS) be HELD and REFERRED TO COMMITTEE carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. AB2021-533 Request approval for the County Executive to enter into an agreement with Kramer Consulting, Inc. for facilitation services for the WRIA 1 Drainage Based Management Pilot Project in the amount of \$100,000 (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.

Councilmembers discussed the motion.

Paula Harris, Public Works Department, spoke about the contract and answered questions about the consultant.

Browne's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. AB2021-534 Request Council approval of the 2021-2023 Criminal Justice Treatment Account Plan Update

Browne reported for the Finance and Administrative Services Committee and **moved** that the Request be APPROVED.

Elenbaas asked what the dollar amount is.

Browne's motion that the REQUEST be APPROVED carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

6. AB2021-545 Request authorization for County Executive to enter into an Interlocal Grant Agreement between Whatcom County and the Administrative Office of the Courts to reimburse Whatcom County for extraordinary costs associated with the Blake decision in the amount of \$1,790,621

Browne reported for the Finance and Administrative Services Committee and **moved** that the Interlocal be AUTHORIZED.

Councilmembers discussed the motion.

The following people answered questions:

- Tyler Schroeder, Executive's Office
- Karen Frakes, Prosecuting Attorney's Office

They answered questions whether the money goes to both District and Superior Court, and whether there would be a non-discrimination agreement with the money.

Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

Nay: 2 - Elenbaas, and Kershner

Absent: 0

7. AB2021-551 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center in the amount of \$162,400 for a total amended contract amount of \$1,113,951

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

8. AB2021-555 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Pacific Security to provide COVID-related security services in the amount of \$51,752 for a total amended contract amount of \$123,488

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

(From Council Planning and Development Committee)

9. AB2021-424 Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning to allow and regulate Battery Energy Storage Systems

Elenbaas reported on the Planning and Development Committee and **moved** that the Ordinance be HELD IN COMMITTEE.

Councilmembers discussed the motion and Dana Brown-Davis, Clerk of the Council, answered questions about agenda process.

Elenbaas's motion that the Ordinance be HELD IN COMMITTEE carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

(From Council Committee of the Whole)

10. AB2021-209 Resolution regarding permanent affordability of childcare in Whatcom County

Buchanan reported for the Committee of the Whole and moved to extend the deadline to October 15 (this would hold the item in committee). The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

11. AB2021-525 Discussion and request for Council motion regarding request for proposals (RFP) for independent review of the response to the COVID-19 pandemic

Buchanan reported for the Committee of the Whole.

Cathy Halka, Council Legislative Analyst, briefed the Councilmembers.

Buchanan moved to approve the document titled Substitute Draft Scope for 9.28 as listed as attachment #3 on this file in the Legislative Information Center.

The motion carried by the following vote:

Aye: 7 - Elenbaas, Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan

Nay: 0

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

12. AB2021-528 Resolution approving the Water District 13 Small Water System Management Plan

Buchanan reported for the Committee of the Whole 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 2021-042

(No Committee Assignment)

13. AB2021-538 Resolution setting regular Whatcom County Council meeting dates for 2022

Frazey moved and Byrd seconded that the Resolution be APPROVED.

Councilmembers discussed the motion and why there are three meetings scheduled in May.

Kershner moved to strike May 31 from the proposed agenda dates. The motion was seconded by Byrd.

Dana Brown-Davis, Clerk of the Council, answered whether they would still have the required number of meetings.

Frazey moved and Donovan seconded that the Resolution be HELD IN COUNCIL to give opportunity for the Clerk to come up with a date to strike from the schedule for next year.

Councilmembers discussed the motion and Brown-Davis stated she could rework the schedule and bring back a couple options.

Frazey's motion that the Resolution be HELD IN COUNCIL carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2021-559 Council appointment to fill vacancies on the Drayton Harbor Shellfish Protection District Advisory Committee - Applicant(s): Ravyn Whitewolf and Charlie Hawkins

Donovan moved to appoint both applicants. The motion was seconded by Byrd.

Dana Brown-Davis, Clerk of the Council, stated a motion for a waiver of the one-year requirement would be needed.

Donovan moved to waive the interim period for being off the board for the nominee Charlie Hawkins but there was already a motion on the floor.

Donovan withdrew his motion to appoint.

Donovan moved to waive the interim period on the Drayton Harbor Shellfish Protection District Advisory Committee so Charlie Hawkins would be eligible to be an applicant for this position. The motion was seconded by Byrd.

Brown-Davis answered how long the position was advertised and whether any other applicants were received.

The motion to waive carried by the following vote:

Aye: 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Abstain: 1 - Elenbaas

Councilmembers discussed the item further.

Byrd moved and Frazey seconded that both applicants be APPOINTED. 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. AB2021-546 Request confirmation of the County Executive's appointment of Elizabeth Lorence to the Marine Resources Committee

Donovan moved and Byrd seconded that the Executive Appointment be CONFIRMED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

ITEMS ADDED BY REVISION

1. [AB2021-578](#) Request authorization for the Whatcom County Prosecutor's Office to join Whatcom County with several other counties and the Washington State Association of Counties as a plaintiff in Benton County, et al. v. State of Washington filed in the King County Superior Court, an action seeking a declaratory judgment regarding obligations under State v. Blake

Karen Frakes, Prosecuting Attorney's Office, briefed the Councilmembers and answered questions (after the vote).

Councilmembers discussed the item.

Byrd moved and Buchanan 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

INTRODUCTION ITEMS

Buchanan stated that AB2021-549 has a substitute (see note on this below).

Donovan moved to introduce items one through seven. The motion was seconded by Byrd (see votes on individual items below).

Dana Brown-Davis, Clerk of the Council, confirmed that it is **AB2021-547** that has a substitute.

1. [AB2021-547](#) Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440

Donovan moved and Byrd seconded that the SUBSTITUTE 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. [AB2021-549](#) Ordinance establishing the Central Plaza Tenant Improvements Fund and establishing a project based budget for the Central Plaza Tenant Improvements Project

Donovan moved and Byrd seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-561](#) Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)

Donovan moved and Byrd seconded that the Ordinance be INTRODUCED.

The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-185](#) Ordinance amending Whatcom County Code 9.32, Unlawful Discharge of Firearms, to establish a no shooting zone in the Drayton Harbor area of Whatcom County

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. [AB2021-539](#) Ordinance adopting amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities (2021-2026)

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

6. [AB2021-543](#) Ordinance adopting 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

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

7. AB2021-544 Ordinance adopting amendments to the Unified Fee Schedule relating to density credit fees for increasing the size of accessory dwelling units

Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Buchanan reported for Committee of the Whole Executive Session and stated there was a motion to read into the record.

Karen Frakes, Prosecuting Attorney's Office, answered a question about Browne proposing an alternative motion.

Browne read a statement and ***moved*** to reject further negotiations and refer the matter back to the courts for adjudication. The motion was seconded by Elenbaas.

Councilmembers discussed Browne's motion.

Christopher Quinn, Prosecuting Attorney's Office, spoke and Councilmembers continued to discuss the motion.

The motion failed by the following vote:

Aye: 1 - Browne

Nay: 6 - Frazey, Kershner, Buchanan, Byrd, Donovan, and Elenbaas

Councilmembers discussed with Quinn and Frakes how to proceed with the item.

Donovan moved the following:

I hereby move to authorize the Executive to enter into the settlement agreement as described by Mr. Quinn. The motion was seconded by Byrd.

Councilmembers discussed the motion.

Buchanan read *Donovan's full motion* from Committee of the Whole Executive Session into the record:

I hereby move to authorize the Whatcom County Executive to enter into the settlement agreement negotiated by the District and the Plaintiffs in the matter of Ericksen v. Whatcom County Flood Control Zone District, Whatcom County Superior Court cause no. 20-2-00650-37.

The motion carried by the following vote:

Aye: 6 - Kershner, Buchanan, Byrd, Donovan, Elenbaas, and Frazey,

Nay: 1 - Browne

Councilmembers continued to give committee reports.

Buchanan reported for the Criminal Justice and Public Safety Committee and *moved* to re-engage the Stakeholder Advisory Committee members and re-affirm the principles in the resolution (Res 2019-036). The motion was seconded by Donovan.

The motion carried by the following vote:

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

After the other committee reports, Councilmembers discussed other topics, including the location of the WSU Extension, the Bellingham City Council having public sessions on dates opposite of their public meetings, the fact that Whatcom County Council has not mandated any vaccines to date, and COVID-19 policies concerning keeping kids in school and employees working.

Tyler Schroeder, Executive's Office, answered questions about the WSU Extension.

Approved motions in Committee Reports:

The following motion was approved 6-1 (with Browne opposed): I hereby move to authorize the Whatcom County Executive to enter into the settlement agreement negotiated by the District and the Plaintiffs in the matter of Ericksen v Whatcom County Flood Control Zone District, Whatcom County Superior Court cause no. 20-2-00650-37.

A motion was approved 7-0 to re-engage the Stakeholder Advisory Committee members and re-affirm the principles in the resolution (Res 2019-036).

ADJOURN

The meeting adjourned at 11:12 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: AB2021-539

File ID:	AB2021-539	Version:	1	Status:	Introduced for Public Hearing
File Created:	09/13/2021	Entered by:			
Department:		File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities (2021-2026)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities (2021-2026). The amendment would add the Central Plaza Public Defender Tenant Improvement project to the Six-Year CIP.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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

Sept 13, 2021

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

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Six-Year CIP Amendment (PLN2021-00013)

The Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities addresses County parks, trails, activity centers, maintenance & operations, general government buildings and sites, Sheriff's Office, emergency management, adult corrections, juvenile detention, transportation, and stormwater facilities.

The Whatcom County Comprehensive Plan indicates that the Six-Year CIP should be updated every two years. The last CIP update was approved by the County Council in 2020. The next comprehensive update is scheduled for 2022. However, the County has identified a Public Defender Office tenant improvement project it wants to complete before the next CIP update in 2022. Therefore, the subject proposal is to amend the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan) as follows:

- Add the Central Plaza Public Defender Tenant Improvement project.

The Whatcom County Planning Commission recommended approval of the Six-Year CIP amendment on September 9, 2021.

Under the Growth Management Act, Comprehensive Plan amendments such as the subject proposal can only be adopted by the County Council at concurrent review. However, there is an exception for capital facility amendments. Specifically, RCW 36.70A.130(2)(a)(iv) allows "The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget." Therefore, this amendment will either have to be adopted with the other Comprehensive Plan amendments at concurrent review or with a budget amendment. We understand that a budget amendment will be introduced on September 28 for potential Council action on Oct 12.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE
WHATCOM COUNTY COMPREHENSIVE PLAN
RELATING TO CAPITAL FACILITIES PLANNING**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The proposal is to amend the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan) as follows:
 - a. Add the Central Plaza Public Defender Tenant Improvement project.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on August 6, 2021.
3. The SEPA Official determined on August 6, 2021 that the determination of non-significance (DNS) issued in 2020 for the Six-Year CIP update is sufficient for the subject amendments.
4. Notice of the Planning Commission hearing was posted on the County website on August 11, 2021.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 26, 2021.
6. Notice of the Planning Commission hearing was sent to the County's e-mail list on August 26, 2021.

7. The Planning Commission held a public hearing on the subject amendments on September 9, 2021.
8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must find all of the following:
 - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.
9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.
10. GMA planning goal # 12 is to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards" (RCW 36.70A.020(12)).
11. The subject amendments consist of updating the Six-Year CIP for Whatcom County Facilities for the 2021-2026 planning period by adding a

tenant improvement project to accommodate staffing/meeting space needs of the Public Defender's Office. Updating the CIP is one step in the process of planning capital facilities, including general government buildings and sites, to serve the people of Whatcom County.

12. County-Wide Planning Policy K-1 indicates that, as part of the comprehensive planning process, the County must identify appropriate land for public facilities that meets the needs of the community including recreation, transportation and human service facilities.
13. The Six-Year CIP identifies such improvements as contemplated by the County Wide Planning Policies.
14. There are no known interlocal agreements relating to the subject amendments.
15. An updated Six-Year CIP was adopted for County owned or operated facilities in 2020. The subject proposal is a minor amendment to the CIP to address an identified need of the Public Defender's Office.
16. The goal of the Six-Year CIP for Whatcom County Facilities is to plan for County owned or operated facilities. Improving the Central Plaza building to meet the needs of the Public Defender's Office is in the public interest.
17. The subject proposal does not involve rezoning property.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan) 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: _____

Chapter 4 – General Government Buildings and Sites

Existing Office Space

The 2020 inventory of County government office space is 331,141 square feet at nine locations. This inventory is shown below.

Table 7. Existing County Government Office Space

Site No.	Facility Name	Square feet
1	Civic Center Annex (322 North Commercial)	30,000
2	Central Plaza Building (215 N. Commercial)	10,307
3	County Courthouse (311 Grand Avenue)	200,000
4	Forest St. Annex (1000 North Forest St.)	14,000
5	509 Girard St.	13,189
6	3373 Mt. Baker Highway	2,110
7	1500 N. State St.	16,820
8	Northwest Annex (5280 Northwest Dr.)	20,265
9	Crisis Stabilization Center (2026 Division St.)	24,450
TOTAL		331,141

Future Needs

The Whatcom County Comprehensive Plan does not contain a level of service standard for general government buildings. The County will budget for improvements to such facilities as needed.

Proposed Improvement Projects

Improvement and maintenance projects on existing buildings and sites over the six-year planning period total approximately ~~\$52.9~~^{\$52.5} million as shown below.

Table 8. Proposed Government Building and Site Improvement Projects

	Funding Source	2021	2022	2023	2024	2025	2026	Totals
1 Courthouse Maintenance Projects (311 Grand Ave)	1, 2	311,837	1,020,514		500,000	500,000		2,332,351
2 Northwest Annex Campus	2, 3, 4	1,950,000	12,000,000	12,000,000				25,950,000
3 Courthouse Exterior Project - Phase 2 (311 Grand Ave)	1, 2	500,000	2,921,000	2,921,000				6,342,000
4 Improvements, including remodel and HVAC (1500 N. State St)	5, 6			750,000	8,717,000			9,467,000
5 Improvements, including roof, HVAC, and windows (509 Girard St)	2				80,000	1,380,000		1,460,000
6 Prosecuting Attorney - Office Update (311 Grand Ave)	1	60,514						60,514
7 Civic Center - Parking Lot (322 N. Commercial)	1, 4				75,000	400,000		475,000
8 Civic Center Building Renovation (322 N Commercial)	1, 4	3,000,000	1,600,000	400,000				5,000,000
9 Interior Painting, Carpets, Asphalt Repairs (various locations)	1	165,000	165,000	165,000	165,000	165,000	165,000	990,000
10 Central Plaza Debt Service (215 N. Commercial)	1	124,000	124,000	124,000				372,000
11 ADA Compliance (various locations)	1	40,000	40,000					80,000
12 Central Plaza - Public Defender Tenant Improvement (215 N. Commercial)	1	182,302	182,302					364,604
Totals		6,333,653	18,052,816	16,360,000	9,537,000	2,445,000	165,000	52,893,469
		6,151,351	17,070,514					52,528,665
Funding Sources								
1. Real Estate Excise Tax (REET)								
2. Economic Development Initiative (EDI)								
3. Debt								
4. Road Fund								
5. State Street Project Based Budget								
6. Grants								

Chapter 11 – Total Costs

Total Costs for the six-year planning period are shown below.

Table 18. Total Costs for the Six-Year Planning Period

	Total Costs 2021-2026	Percent of Total Costs
Parks, Trails, and Activity Centers	11,869,457	4.77% 4.78%
Maintenance and Operations	812,375	0.33%
General Government Buildings and Sites	52,893,469 52,528,865	21.25% 21.17%
Sheriff's Office	21,730,000	8.73% 8.76%
Emergency Management	405,842	0.16%
Adult Corrections	95,197,922	38.24% 38.36%
Juvenile Detention	0	0.00%
Transportation	53,797,000	21.61% 21.68%
Stormwater Facilities	12,213,000	4.91% 4.92%
TOTAL	248,919,065 248,554,461	100.00%

The County plans to undertake capital improvement projects costing approximately ~~\$249~~\$248 million between 2021 and 2026, which will be financed with a combination of local, state, federal, and other funding sources.

WHATCOM COUNTY PLANNING COMMISSION

Capital Facility Comprehensive Plan Amendments

FINDINGS OF FACT AND REASONS FOR ACTION

Background Information

1. The proposal is to amend the Six-Year Capital Improvement Program (CIP) for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan) as follows:
 - a. Add the Central Plaza Public Defender Tenant Improvement project.
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on August 6, 2021.
3. The SEPA Official determined on August 6, 2021 that the determination of non-significance (DNS) issued in 2020 for the Six-Year CIP update is sufficient for the subject amendments.
4. Notice of the Planning Commission hearing was posted on the County website on August 11, 2021.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 26, 2021.
6. Notice of the Planning Commission hearing was sent to the County's e-mail list on August 26, 2021.
7. The Planning Commission held a public hearing on the subject amendments on September 9, 2021.
8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must find all of the following:

- a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
- b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
- c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
- d. The amendment does not include or facilitate spot zoning.

Growth Management Act

9. The Growth Management Act (GMA) establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plan amendments.
10. GMA planning goal # 12 is to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards" (RCW 36.70A.020(12)).
11. The subject amendments consist of updating the Six-Year CIP for Whatcom County Facilities for the 2021-2026 planning period by adding a tenant improvement project to accommodate staffing/meeting space needs of the Public Defender's Office. Updating the CIP is one step in the process of planning capital facilities, including general government buildings and sites, to serve the people of Whatcom County.

County-Wide Planning Policies

12. County-Wide Planning Policy K-1 indicates that, as part of the comprehensive planning process, the County must identify appropriate land for public facilities that meets the needs of the community including recreation, transportation and human service facilities.
13. The Six-Year CIP identifies such improvements as contemplated by the County Wide Planning Policies.

Interlocal Agreements

14. There are no known interlocal agreements relating to the subject amendments.

Further Studies/Changed Conditions

15. An updated Six-Year CIP was adopted for County owned or operated facilities in 2020. The subject proposal is a minor amendment to the CIP to address an identified need of the Public Defender's Office.

Public Interest

16. The goal of the Six-Year CIP for Whatcom County Facilities is to plan for County owned or operated facilities. Improving the Central Plaza building to meet the needs of the Public Defender's Office is in the public interest.

Spot Zoning

17. The subject proposal does not involve rezoning property.

CONCLUSION

The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060.

RECOMMENDATION

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approval of Exhibit A, amending the General Government Buildings and Sites Chapter of the Six-Year Capital Improvement Program for Whatcom County Facilities 2021-2026 (Appendix F of the Whatcom County Comprehensive Plan).

WHATCOM COUNTY PLANNING COMMISSION


Kelvin Barton, Chair


Tammy Axlund, Secretary

9-13-2021
Date

9/10/21
Date

Commissioners voted to recommend approval on September 9, 2021 (vote was 8-0 with 1 member absent). Members present at the meeting when the vote was taken: Kelvin Barton, Atul Deshmane, 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: AB2021-543

File ID:	AB2021-543	Version:	1	Status:	Introduced for Public Hearing
File Created:	09/14/2021	Entered by:			
Department:		File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance adopting 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:

Ordinance adopting 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:
09/28/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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

September 14, 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.

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 has recently been 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:

. . . A density credit program where development incentives are offered in cities and/or UGAs if density credits are purchased by the developer. Funds from the density credit program would supplement the existing Conservation Easement Program funding . . .

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 density bonuses in urban growth areas in association with the density credit program, Conservation Easement Program, 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 Conservation Easement Program, density bonuses within UGAs in association with the density credit program, 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 collection and detention</u> 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 collection and detention</u> 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 collection and detention</u> 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**	4,000 sq. ft. 5,500 sq. ft.	3,000 sq. ft. 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 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 exceedbe 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, t~~he 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



Tammy Axlund, Secretary

7/12/2021

Date

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 Mocerì.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-544

File ID:	AB2021-544	Version:	1	Status:	Introduced for Public Hearing
File Created:	09/14/2021	Entered by:			
Department:		File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to the Unified Fee Schedule relating to density credit fees for increasing the size of accessory dwelling units

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting amendments to the Unified Fee Schedule relating to density credit fees for increasing the size of accessory dwelling units. The proposed fee is \$8 per square foot of increased size of an accessory dwelling unit.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Staff Memo, Draft Ordinance

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

September 14, 2021

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

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Unified Fee Schedule Amendment / Density Credits

The Whatcom County Council is considering a separate ordinance that would allow an increase in the size of accessory dwelling units if density credit fees are paid by the applicant. However, there is no density credit fee in the Unified Fee Schedule (UFS) for enlarging accessory dwelling units. Therefore, we are proposing this ordinance to amend the UFS to include such a fee.

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 the following:

. . . 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. . . (p. 34).

The proposed ordinance includes an \$8/square foot fee for expanding accessory dwelling units, as recommended by the Work Group.

Thank you for your review and consideration of this matter.

PROPOSED BY: Planning & Development Services
DATE: _____

ORDINANCE NO. _____
AMENDMENT NO. 1 TO ORDINANCE NO. 2020-062 ADOPTING THE 2021
WHATCOM COUNTY UNIFIED FEE SCHEDULE

WHEREAS, the County Council approved the 2021 Whatcom County Unified Fee Schedule on November 24, 2020, and

WHEREAS, 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 the following:

. . . 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. . . (p. 34); and

WHEREAS, the Whatcom County Council is considering a separate ordinance in 2021 that would allow an increase in the size of accessory dwelling units if density credit fees are paid by the applicant; and

WHEREAS, an additional density credit fee is proposed in accordance with WCC 20.91.030.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the Planning and Development Services section of the Whatcom County Unified Fee Schedule is hereby amended as presented on Exhibit A.

ADOPTED this _____ day of _____, 2021

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chair

APPROVED as to form:

() Approved () Denied

/s/ Royce Buckingham

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Unified Fee Schedule Amendment No. 1 – Exhibit A

<u>UFS#</u>	<u>Description</u>	<u>2021 Rate</u>	<u>Rate Basis</u>	<u>Authorization</u>
2879	Density Credit	\$4,000	per dwelling unit	WCC 20.91.030, 22
NEW	Density Credit (ADUs)	\$8	per square foot	WCC 20.91.030, 22



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:	Introduced for Public Hearing
File Created:	03/16/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:			
Agenda Date:	10/12/2021	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	
09/14/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
09/28/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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

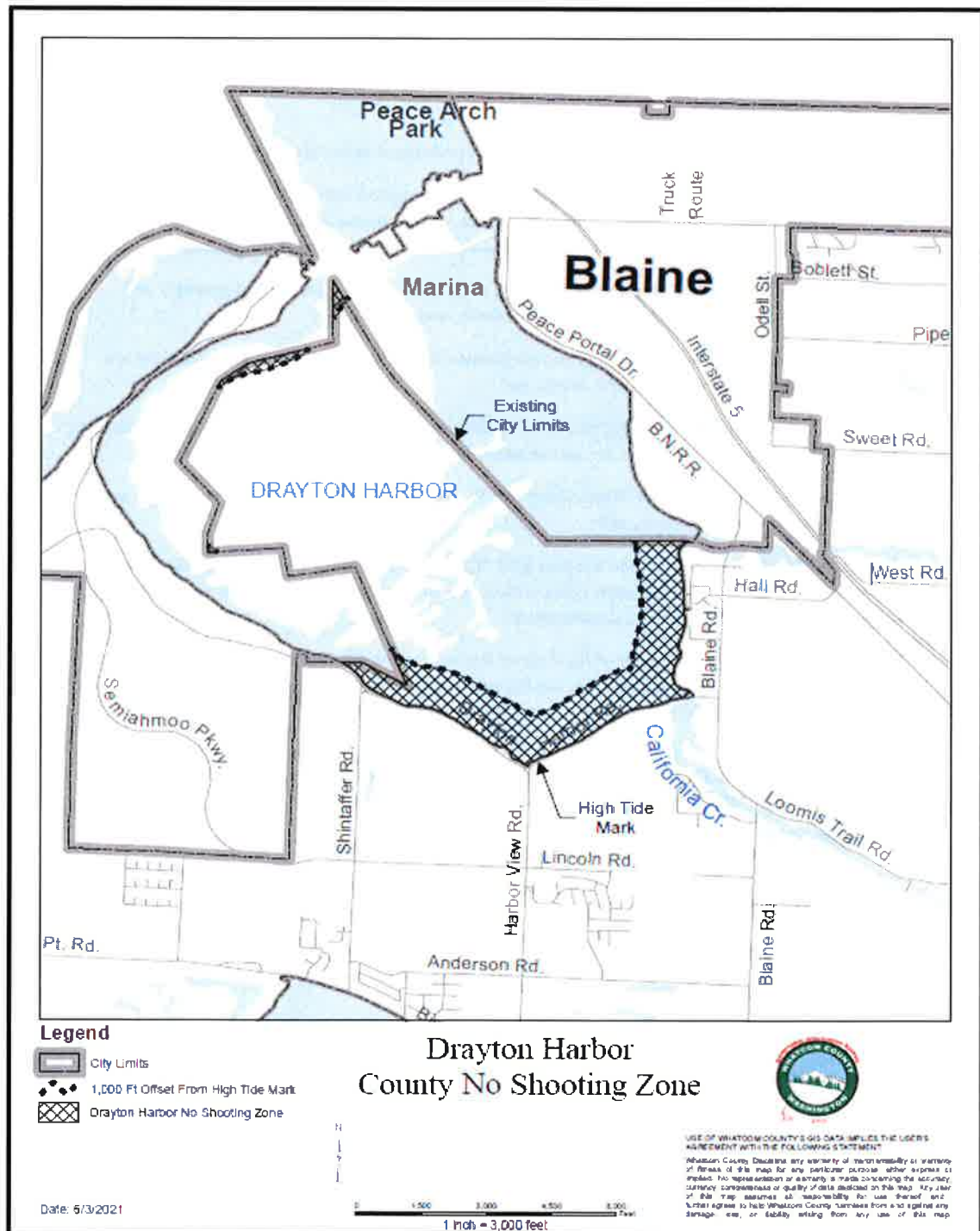
Page 1 of 1

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.

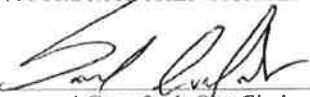
PASSED BY THE CITY COUNCIL OF BLAINE, WASHINGTON, on the 8th day of July, 2019, and approved by the Mayor on the same day.

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."



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

North Puget Sound • Region 4 • 16018 Mill Creek Blvd., Mill Creek, WA 98012-1296

Telephone: (425) 775-1311 • Fax: (425) 338-1066

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](#)



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,

A handwritten signature in dark ink, appearing to read 'Travis Brockie', written over a horizontal line.

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: AB2021-414

File ID:	AB2021-414	Version:	1	Status:	Introduced for Public Hearing
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:	10/12/2021			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:
09/14/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
09/28/2021	Council	WITHDRAWN	

Attachments: Staff Memo, Franchise Fact Sheet, Application, Franchise Agreement, Agenda Revision Notice for 9.28.21.pdf



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.

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

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 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: _____

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

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



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

WHATCOM COUNTY COUNCIL AGENDA REVISION NOTICE FOR SEPTEMBER 28, 2021

VIRTUAL MEETING
AGENDA REVISED 9.28.2021
(TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010)

THE FOLLOWING ITEM HAS BEEN **WITHDRAWN** FROM FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

Special Presentation

1. [AB2021-536](#) Report from Superior Court

Reason: Item rescheduled to 10.12.2021 Criminal Justice and Public Safety Committee

THE FOLLOWING ITEM HAS BEEN **WITHDRAWN** FROM COUNCIL:

Public Hearings

2. [AB2021-414](#) Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

Reason: Item scheduled incorrectly (correct hearing date is 10.12.2021)

THE FOLLOWING ITEM HAS BEEN **ADDED** TO COUNCIL:

ITEMS ADDED BY REVISION

1. [AB2021-578](#) Request authorization for the Whatcom County Prosecutor's Office to join Whatcom County with several other counties and the Washington State Association of Counties as a plaintiff in Benton County, et al. v. State of Washington filed in the King County Superior Court, an action seeking a declaratory judgment regarding obligations under State v. Blake

Reason: Item added by the Prosecuting Attorney's Office

THE FOLLOWING COUNCIL MEETING AGENDA ITEMS HAVE BEEN **REVISED**:

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2021-559](#) Council appointment to fill vacancies on the Drayton Harbor Shellfish Protection District Advisory Committee - Applicant(s): Ravyn Whitewolf and [Charlie Hawkins](#)

Reason: Item revised to add additional applicant

INTRODUCTION ITEMS

1. [AB2021-547](#) Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440

Reason: Substitute version submitted by the Administration



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-538

File ID:	AB2021-538	Version:	1	Status:	Held in Council
File Created:	09/13/2021	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Resolution		
Assigned to:	Council	Final Action:			
Agenda Date:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution setting regular Whatcom County Council meeting dates for 2022

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution setting regular Whatcom County Council meeting dates for 2022

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/28/2021	Council	HELD IN COUNCIL	Council

Attachments: Proposed Resolution - Original, Proposed Resolution - Option 2, Proposed Resolution - Option 3

PROPOSED BY: Council Clerk
INTRODUCTION DATE: September 28, 2021

RESOLUTION NO. _____

**ESTABLISHING REGULAR WHATCOM COUNTY COUNCIL
MEETING DATES FOR 2022**

WHEREAS, the Whatcom County Council has set every other Tuesday as its regular meeting schedule; and

WHEREAS, all departments should plan to schedule agenda items in accordance with the Council's approved meeting schedule to avoid the need for special meetings; and

WHEREAS, it is the Council's policy to plan for breaks in its schedule in August and December, and to avoid scheduling meetings on specific dates during the year.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that regular Council meetings shall be scheduled for the following dates in 2022:

January 11 and 25
February 8 and 22
March 8 and 22
April 5 and 19
May 3, 17, and 31
June 14 and 28
July 12 and 26
August 9
September 13 and 27
October 11 and 25
November 9 (WEDNESDAY) and 22
December 6

BE IT FURTHER RESOLVED that when members of the County Council sit in an administrative or legislative capacity in situations such as, but not limited to, supervisors of special districts or members of the county health board, all business in these capacities shall be treated as regular items of business during council meetings and the council's agenda shall include a notation for any item being considered in one of more of these other capacities.

APPROVED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

/s/ Karen Frakes (approved via e-mail)/ JL
Civil Deputy Prosecutor

PROPOSED BY: Council Clerk
INTRODUCTION DATE: October 12, 2021

RESOLUTION NO. _____

**ESTABLISHING REGULAR WHATCOM COUNTY COUNCIL
MEETING DATES FOR 2022**

WHEREAS, the Whatcom County Council has set every other Tuesday as its regular meeting schedule; and

WHEREAS, all departments should plan to schedule agenda items in accordance with the Council's approved meeting schedule to avoid the need for special meetings; and

WHEREAS, it is the Council's policy to plan for breaks in its schedule in August and December, and to avoid scheduling meetings on specific dates during the year.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that regular Council meetings shall be scheduled for the following dates in 2022:

January 11 and 25
February 8 and 22
March 8 and 22
April 5 and 19
May 3, and 17, ~~and 31~~
June 14 and 28
July 12 and 26
August 9
September 13 and 27
October 11 and 25
November 9 (WEDNESDAY) and 22
December 6

BE IT FURTHER RESOLVED that when members of the County Council sit in an administrative or legislative capacity in situations such as, but not limited to, supervisors of special districts or members of the county health board, all business in these capacities shall be treated as regular items of business during council meetings and the council's agenda shall include a notation for any item being considered in one of more of these other capacities.

APPROVED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

PROPOSED BY: Council Clerk
INTRODUCTION DATE: October 12, 2021

RESOLUTION NO. _____

**ESTABLISHING REGULAR WHATCOM COUNTY COUNCIL
MEETING DATES FOR 2022**

WHEREAS, the Whatcom County Council has set every other Tuesday as its regular meeting schedule; and

WHEREAS, all departments should plan to schedule agenda items in accordance with the Council's approved meeting schedule to avoid the need for special meetings; and

WHEREAS, it is the Council's policy to plan for breaks in its schedule in August and December, and to avoid scheduling meetings on specific dates during the year.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that regular Council meetings shall be scheduled for the following dates in 2022:

January 11 and 25
February 8 and 22
March 8 and 22
April ~~5~~¹² and ~~19~~²⁶
May ~~3~~¹⁰ and ~~17~~²⁴
June ~~14~~⁷ and ~~28~~²¹
July 12 and 26
August 9
September 13 and 27
October 11 and 25
November 9 (WEDNESDAY) and 22
December 6

BE IT FURTHER RESOLVED that when members of the County Council sit in an administrative or legislative capacity in situations such as, but not limited to, supervisors of special districts or members of the county health board, all business in these capacities shall be treated as regular items of business during council meetings and the council's agenda shall include a notation for any item being considered in one of more of these other capacities.

APPROVED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-582

File ID:	AB2021-582	Version:	1	Status:	Agenda Ready
File Created:	09/29/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 16, in the amount of \$411,953

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #16 requests funding from the General Fund:

1. To appropriate \$14,487 in Public Defender to fund Blake presentation from State Office of Public Defense funding.
2. To appropriate \$385,466 in Non Departmental to fund amendment to Opportunity Council CDBG grant which funds services to counter COVID-related community impacts.
3. To appropriate \$12,000 in Non Departmental to fund increases in indigent burial services.

HISTORY OF LEGISLATIVE FILE

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

Attachments: Proposed Ordinance, Budget Summary, Supplemental Requests

PROPOSED BY: Executive
INTRODUCTION DATE: 10/12/21

ORDINANCE NO.
AMENDMENT NO. 16 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			
Public Defender	14,487	(41,506)	(27,019)
Non Departmental	397,466	(385,466)	12,000
Total General Fund	411,953	(426,972)	(15,019)
Total Supplemental	411,953	(426,972)	(15,019)

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. 16				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Public Defender	To fund BLAKE representation with State Office of Public Defense funding.	14,487	(41,506)	(27,019)
Non Departmental	To fund amendment to Opportunity Council CDBG grant to fund services to counter COVID-related community impacts.	385,466	(385,466)	-
Non Departmental	To fund increases in Indigent Burial services.	12,000	-	12,000
Total General Fund		411,953	(426,972)	(15,019)
Total Supplemental		411,953	(426,972)	(15,019)

Supplemental Budget Request

Status: Pending

Public Defender

Report 9/23/2021

Fund 1

Cost Center 2673

Originator: Julie Wiles

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: OPD Limited funds for BLAKE representation

X

[Signature]

9/24/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4334.0124	Public Defense	(\$41,506)
	6120	Extra Help	\$2,980
	6230	Social Security	\$228
	6255	Other H&W Benefits	\$4
	6259	Worker's Comp-Interfund	\$60
	6269	Unemployment-Interfund	\$8
	6510	Tools & Equip	\$11,207
	Request Total		(\$27,019)

1a. Description of request:

The Whatcom County Public Defender's Office has received grant funding from the Washington State Office of Public Defense in the amount of \$41,506.00 for the purpose of representing individuals seeking to obtain orders to vacate felony convictions or have felony resentencing pursuant to State v. Blake, 481 P.3d 521 (2021). We have two attorneys and at least one legal assistant as well as temp extra help working on the Blake cases. We plan to bill for three of the staff members who are already budgeted for this year and we would like to have budget authority to bill for a couple months of temp extra help and to also purchase computer equipment for the express purpose of working on Blake matters. We will be creating salary savings that we will be able to use for purchasing other office equipment.

1b. Primary customers:

Individuals seeking to obtain orders to vacate felony convictions or have felony resentencing pursuant to State v. Blake.

2. Problem to be solved:

This plan will allow our department to help pay for temp extra help already working on Blake matters and to purchase needed equipment for staff members working on Blake related matters.

3a. Options / Advantages:

OPD has already granted this funding. We only require permission to use these funds. We are overloaded with Blake case related tasks, understaffed, and need to purchase computer equipment.

3b. Cost savings:

The cost savings for the County could come to \$41,506.00.

4a. Outcomes:

With this additional funding, the Public Defender's Office will create salary savings and allow the department to purchase equipment that will help us process cases more efficiently.

4b. Measures:

Granting this supplemental request will allow our department to attempt to stay within State Standards of Public Defense and contribute to better staff retention and morale.

Thursday, September 23, 2021

Rpt Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Public Defender

Suppl Bgt # 3295

Fund 1

Cost Center 2673

Originator: Julie Wiles

5a. Other Departments/Agencies:

Granting this request will support adequate staffing to timely process Blake cases.

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

None

6. Funding Source:

The Washington State Office of Public Defense is the sole source of the funding for this request.

Thursday, September 23, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request*Status:* Pending**Non-Departmental***Suppl ID #* 3498**Fund** 1**Cost Center** 4296**Originator:** Suzanne Mildner**Expenditure Type:** One-Time**Year 1** 2021**Add'l FTE** ☐**Add'l Space** ☐**Priority** 1**Name of Request:** OppCo CV2 CDBG Grant**X**

9/27/21

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

Costs:	Object	Object Description	Amount Requested
	4333.1422	HUD-CDBG	(\$385,466)
	6610	Contractual Services	\$385,466
	Request Total		\$0

1a. Description of request:

This request is for additional funding (CV2) to an existing CDBG contract (CV1) which supports activities to prevent, prepare for and respond to coronavirus in partnership with Opportunity Council for the CV1/CV2 consortium area (Whatcom County and all its cities). These funds will result in public services, microenterprise assistance, and housing planning for the Whatcom service area in order to stabilize eligible households and microenterprises impacted by COVID-19 and create economic opportunities.

1b. Primary customers:

CDBG-eligible households and businesses in Whatcom County

2. Problem to be solved:

This grant funding is accessed through the local government in partnership with our subrecipient Opportunity Council, who will oversee the delivery of services through both their public services program as well as the microenterprise assistance program. This additional funding also provides for planning activities related to LMI housing in the Ferndale area.

3a. Options / Advantages:

N/A

3b. Cost savings:

N/A

4a. Outcomes:

Eligible public services will benefit approximately 260 persons as well as approximately 16 microenterprise businesses. Planning-only CDBG CV funds will benefit approximately 250 people based upon an estimated 100 units of housing affordable to LMI households to be produced by the plan. This will occur over the course of the contract period which ends 1/31/23.

4b. Measures:

Grant reports and planning reports will be submitted through the course of the grant period.

5a. Other Departments/Agencies:

Opportunity Council

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

Greg Winter, Opportunity Council Executive Director; David Webster, Director of Early Learning and Family Services

6. Funding Source:

Federal funding from HUD through the Washington State Department of Commerce's CDBG Program.

Monday, September 27, 2021

Rpt: Rpt Suppl Regular

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID #: 3421

Fund 1

Cost Center 4025

Originator: Tawni Helms

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Indigent Burial budget increase

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$12,000
	Request Total		\$12,000

1a. Description of request:

As per Whatcom County Code 2.06.120 the medical examiner, after accepting jurisdiction for indigent unclaimed human remains, shall arrange for the transportation and cremation of such remains at the county expense. This budget supplemental will cover the current shortfall and provide enough budget authority based on the this years number of claims submitted..

1b. Primary customers:

2. Problem to be solved:

The cost for this service fluctuates from year to year. This year we have seen a marked increase in the number claims for indigent burial as higher than projected claims have been submitted. This budget supplemental will cover the current shortfall and provide enough budget authority based on the annual projections.

3a. Options / Advantages:

Whatcom County is obligated to cover this cost per county code 2.06.120

3b. Cost savings:

n/a

4a. Outcomes:

Whatcom County can pay the claims submitted and approved for indigent cremation.

4b. Measures:

Claims will be paid.

5a. Other Departments/Agencies:

Medical Examiners Office

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

Medical Examiner

6. Funding Source:

General Fund

Wednesday, September 22, 2021

Rpt: Rpt Suppl Regular



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-572

File ID:	AB2021-572	Version:	1	Status:	Agenda Ready
File Created:	09/24/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Whatcom County Code 12.20 and RCW 36.87 provide for the procedures for approving road vacations. The code amendment will better align the processing of road vacation petitions and provide better service to petitioners. The code changes will clarify and correct outdated sections of the code

HISTORY OF LEGISLATIVE FILE

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

Attachments: Staff memo, Proposed ordinance (clean), Proposed ordinance (redline)



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: Ordinance Amending Whatcom County Code 12.20 Road Vacations

DATE: September 24, 2021

▪ **Requested Action**

Adopt an ordinance amending Whatcom County Code 12.20 to update procedures for processing petitions.

▪ **Background and Purpose**

Whatcom County Code 12.20 was last amended on October 11, 1994. The Public Works Department and the County Council Office wish to amend the code to better align the processing of road vacation petitions and provide better service to petitioners. The code changes will clarify and correct outdated sections of the code as well. The processing of these petitions will not change the schedule by which Council hears and receives information about these petitions. Road Vacations will still include a Council agenda item requesting direction to move forward on an Engineer's report prior to bringing forward a resolution.

Please contact me at extension 6216 if you have any questions or concerns regarding the terms of this ordinance.

Encl.

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.20 ROAD VACATIONS TO
UPDATE PROCEDURES FOR PROCESSING PETITIONS**

WHEREAS, the Revised Code of Washington Chapter 36.82 authorizes the Whatcom County Council to receive compensation for the vacation of county roads; and

WHEREAS, on November 23, 1993, Council adopted Ordinance 1993-080 to replace fees listed with a reference to the fee set forth in the Whatcom County Unified Fee Schedule and replace the term "board" or "commission" with the term "Council"; and

WHEREAS, on October 11, 1994, Council adopted Ordinance 1994-059 to streamline the road vacation petition, review, and approval/denial processes; and

WHEREAS, the County Council wishes to amend WCC Chapter 12.20 to better align the processing of road vacation petitions with the general operations of the Public Works Department and County Council Office and provide better service to petitioners.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.20 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 9/28/2021)

Satpal Sidhu, County Executive

Date Signed: _____

EXHIBIT A

Chapter 12.20 ROAD VACATIONS

Sections:

- 12.20.010 Authority.
- 12.20.020 Scope and application.
- 12.20.030 Petition – Fees.
- 12.20.040 Petition – Format.
- 12.20.050 Engineer's report and resolutions.

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.010).

12.20.020 Scope and application.

This chapter shall apply to all petitions to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to Chapters 36.87 and 58.17 RCW. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.020).

12.20.030 Petition – Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by a petition fee as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition fee shall be submitted to the Whatcom County public works department.

C. The portion of the petition fee designated for recording the final order of vacation may be reimbursed to the petitioner if the council denies the petition.

12.20.040 Petition – Format.

A. Property owners of the majority of the frontage on any county road or portion thereof may petition the council to vacate and abandon that same county road or portion thereof by submitting a vacation petition to the Whatcom County public works department.

B. The petition must be signed by each petitioner and include the name, address and land owned for each petitioner and set forth that the right of way is useless as part of the county road system and that the public will be benefited by its vacation.

C. The petition must include a legal description of the right of way proposed to be vacated including the square footage of the area of vacation. The county engineer may require a drawing prepared by a surveyor licensed by the State of Washington.

D. As part of the public notification process the petitioner shall include in the petition the names, signatures and addresses of five persons who own property within a one-mile radius

1 of the road to be vacated. If the petitioner can demonstrate to the Whatcom County public
2 works department that fewer than five people own property within a one-mile radius of the
3 road to be vacated then the petitioner shall submit with the petition an affidavit stating the
4 same, in addition to the names, signatures and addresses of those people who do own
5 property within a one-mile radius of the road to be vacated.
6

7 E. By signing the petition, the notified property owners are only acknowledging that they
8 received notice of the petitioner's intent to seek vacation of the county road or portion
9 thereof. Notified property owners are not agreeing to become co-petitioners for the road
10 vacation. (Ord. 94-059 Exh. A)
11

12 12.20.050 Engineer's report and resolutions.

13 A. The county engineer shall examine the petition for completeness and prepare a
14 resolution for council to consider vacating the road. If the Whatcom County council
15 approves the resolution to consider vacating the road it will direct the county engineer to
16 prepare an engineer's report. If the Whatcom County council does not approve the
17 resolution to consider vacating the road the petition to vacate the road shall be deemed to
18 have been denied.
19

20 B. The county engineer shall investigate and prepare the engineer's report on the petition.
21 The engineer is authorized and directed to review each vacation and recommend the
22 compensation amount for the vacation based on current market data. If necessary, the
23 county will contract for a full appraisal, and the petitioner will be responsible for the costs.
24

25 C. Upon completion of the report, the county engineer will prepare a resolution to vacate.
26 In addition to the requirements of RCW 36.87.040, the resolution shall contain the following
27 information:
28

29 1. The petitioner's name, the date the petition was filed with the public works
30 department, a statement that the application and report fee has been paid, and a
31 short description of the roads or portion of roads to be vacated;
32

33 2. A legal description of the roads or portions thereof to be vacated;
34

35 3. A statement that the applicant has six calendar months from the date the
36 resolution is passed to pay any remaining fees to the Whatcom County public works
37 department, with checks made payable to the Whatcom County treasurer, prior to
38 the vacation becoming effective, including but not limited to the compensation
39 amount of the area sought to be vacated;
40

41 4. A statement that the petitioner has met all of the petition requirements as set
42 forth by this chapter, and by all other applicable laws;
43

44 5. The compensation amount of the area sought to be vacated as determined by the
45 county engineer;
46

6. The classification of the road area and the nature of the county's interest therein, according to the following classification:

Class A. Public expenditure made,

Class B. No public expenditures made or nonascertainable from records,

Class 1. No part thereof lies in any plat,

Class 2. Part or all lies within a platted subdivision,

Class 3. Did not remain unopened for public use for a period of five years after the authority was granted for opening it,

Class 4. Remained unopened for public use for five or more years after the order made or authority granted for opening it,

Class 5. Is contained within that portion of a plat which is to be replatted,

Class 6. Abandoned in fact due to relocation of right-of-way,

Class 7. Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title or interest in the right-of-way.

7. A statement that the vacation does not become effective until the fees are paid, and the final order and the resolution are recorded with the county auditor. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.060).

D. The clerk of the council will schedule a public hearing on the resolution to vacate. The county engineer will provide public notice in accordance with Chapter 36.87 RCW.

E. After the public hearing, the Whatcom County council shall consider the resolution to vacate. Action on the resolution will be the Council's final action in the matter.

F. The petition shall be deemed to have been denied if a motion to approve the resolution fails, or if by other means a majority of the council denies approval of the resolution .

G. If the Whatcom County council passes the resolution to vacate, the county engineer, or the county engineer's designee, will prepare a preliminary order of vacation. If the approved resolution contains a provision seeking or requiring payment of further costs beyond those covered by the petition fee or the value of the area being vacated, the county engineer shall notify the applicant that they have six calendar months in which to pay such costs. At the time of the hearing the Whatcom County council may waive payment of the appraised value, or any portion thereof, if it finds that the granting of such vacation will be of some benefit to Whatcom County. Said waiver shall be included as part of the resolution approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior code § 7.40.070).

H. If the petitioner submits the total amount owed to the county within the six calendar months after the date of passage of the resolution, or if upon passage the resolution no money is owed, the county engineer shall prepare a final order of vacation and shall cause it, along with the resolution, to be recorded by the Whatcom County Auditor. If the petitioner fails to make payment as required, the Council's authorization of the vacation becomes null and void.

- 1 I. The vacation becomes official only after a final order of vacation and the resolution to
- 2 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)

PROPOSED BY: PUBLIC WORKS
INTRODUCTION DATE: _____

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.20 ROAD VACATIONS TO
UPDATE PROCEDURES FOR PROCESSING PETITIONS**

WHEREAS, the Revised Code of Washington Chapter 36.82 authorizes the Whatcom County Council to receive compensation for the vacation of county roads; and

WHEREAS, on November 23, 1993, Council adopted Ordinance 1993-080 to replace fees listed with a reference to the fee set forth in the Whatcom County Unified Fee Schedule and replace the term "board" or "commission" with the term "Council"; and

WHEREAS, on October 11, 1994, Council adopted Ordinance 1994-059 to streamline the road vacation petition, review, and approval/denial processes; and

WHEREAS, the County Council wishes to amend WCC Chapter 12.20 to better align the processing of road vacation petitions with the general operations of the Public Works Department and County Council Office and provide better service to petitioners.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.20 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 9/28/2021)

Satpal Sidhu, County Executive
Date Signed: _____

EXHIBIT A

Chapter 12.20 ROAD VACATIONS

Sections:

- 12.20.010 Authority.
- 12.20.020 Scope and application.
- 12.20.030 Petition – Fees.
- 12.20.040 Petition – Format.
- 12.20.050 Engineer's report and resolutions.
- ~~12.20.060 Resolution requirements.~~
- ~~12.20.070 Payment of costs when.~~

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.010).

12.20.020 Scope and application.

This chapter shall apply to all applications~~petitions~~ to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to Chapters 36.87 and 58.17 RCW. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.020).

12.20.030 Petition – Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by an petition appraisal fee ~~and application fee~~ as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition~~full fees for application and appraisal~~ shall be submitted to the Whatcom County public works department.

~~C. The appraisal fee may be refunded by the council at the recommendation of the county engineer if no appraisal has been carried out in connection with the road vacation petition. Said refund may be given only after the council makes its final decision in connection with the road vacation petition in question.~~

~~C.D.~~ The portion of the petition~~application~~ fee designated for recording the final order of vacation may be reimbursed to the petitioner if the council denies the petition.

~~E. A portion of the application fee, but no more than 30 percent of that application fee, may be reimbursed to the petitioner by the council at the time the application is approved, if the vacation was granted pursuant to the Territorial Land Act of 1890. (Ord. 94-059 Exh. A; Ord 93-080 Exh. P; prior code § 7.40.030).~~

12.20.040 Petition – Format.

1 A. ~~Property Owners~~ of the majority of the frontage on any county road or portion thereof
2 may petition ~~the council to vacate and abandon for the vacation and/or abandonment of~~
3 that same county road or portion thereof by ~~submitting a vacation petition to the Whatcom~~
4 ~~County public works department, completing a form prepared by Whatcom County.~~

5
6 B. ~~The petition must be signed by each petitioner and include the name, address and land~~
7 ~~owned for each petitioner and set forth that the right of way is useless as part of the county~~
8 ~~road system and that the public will be benefited by its vacation.~~

9
10 C. ~~The petition must include a legal description of the right of way proposed to be vacated~~
11 ~~including the square footage of the area of vacation. The county engineer may require a~~
12 ~~drawing prepared by a surveyor licensed by the State of Washington.~~

13
14 DB. ~~As part of the public notification process included on the petition and submitted by the~~
15 ~~petitioner shall include in the petition be the names, signatures and addresses of five~~
16 ~~persons who owning property within a one-mile radius of the road to be vacated, as part of~~
17 ~~the public notification process, unless If the petitioner can demonstrate to the Whatcom~~
18 ~~County public works transportation department that fewer than five people own~~
19 ~~property within a one-mile radius of the road to be vacated then, in which case the~~
20 ~~petitioner shall submit with the petition an affidavit stating the same, in addition to the~~
21 ~~names along with the, signatures and addresses of as those many people who as do own~~
22 ~~property within a one-mile radius of the road to be vacated.~~

23
24 EC. By signing the petition, the ~~notified~~ property owners are ~~only~~ acknowledging that they
25 ~~are received notified notice~~ of the petitioner's intent to seek vacation of the county road or
26 portion thereof. ~~Notified property owners~~ They are not agreeing to become co-petitioners for
27 the road vacation. (Ord. 94-059 Exh. A)

28
29 12.20.050 Engineer's report and resolutions.

30 A. ~~The county road engineer shall examine and, if necessary, perform an appraisal of the~~
31 ~~road proposed to be vacated; the engineer shall perfect the legal description of the road~~
32 ~~proposed to be vacated, and report upon such vacation and abandonment to the Whatcom~~
33 ~~County council. Said report shall be in the form of a resolution by which the Whatcom~~
34 ~~County council either authorizes or denies the petition to vacate the county road. the~~
35 ~~petition for completeness and prepare a resolution for council to consider vacating the road.~~
36 ~~If the Whatcom County council approves the resolution to consider vacating the road it will~~
37 ~~direct the county engineer to prepare an engineer's report. If the Whatcom County council~~
38 ~~does not approve the resolution to consider vacating the road the petition to vacate the~~
39 ~~road shall be deemed to have been denied.~~

40
41 B. ~~The county engineer shall investigate and prepare the engineer's report on the petition.~~
42 ~~The engineer is authorized and directed to review each vacation and recommend the~~
43 ~~compensation amount for the vacation based on current market data. If necessary, the~~
44 ~~county will contract for a full appraisal, and the petitioner will be responsible for the costs.~~

45
46 C. ~~Upon completion of the report, The county engineer will prepare a shall file the petition~~
47 ~~and resolution to vacate, with the Whatcom County council upon completion of his/her~~

report. In addition to the requirements of RCW 36.87.040, the resolution shall contain the following information:

1. The petitioner's name, the date the petition was filed with the public works department, a statement that the application and report fee has been paid, and a short description of the roads or portion of roads to be vacated;

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2. A legal description of the roads or portions thereof to be vacated;

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3. A statement that the applicant has six calendar months from the date the resolution is passed to pay any remaining fees to the Whatcom County public works department, with checks made payable to the Whatcom County treasurer, prior to the vacation becoming effective, including but not limited to the compensation amount of the area sought to be vacated;

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4. A statement that the petitioner has met all of the petition requirements as set forth by this chapter, and by all other applicable laws;

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5. The compensation amount of the area sought to be vacated as determined by the county engineer;

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6. The classification of the road area and the nature of the county's interest therein, according to the following classification:

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Class A. Public expenditure made,

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Class B. No public expenditures made or nonascertainable from records,

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Class 1. No part thereof lies in any plat,

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Class 2. Part or all lies within a platted subdivision,

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Class 3. Did not remain unopened for public use for a period of five years after the authority was granted for opening it,

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Class 4. Remained unopened for public use for five or more years after the order made or authority granted for opening it,

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Class 5. Is contained within that portion of a plat which is to be replatted,

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Class 6. Abandoned in fact due to relocation of right-of-way,

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Class 7. Informalities exist in the records of title which are construed to invalidate and divest the public of any right, title or interest in the right-of-way.

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7. A statement that the vacation does not become effective until the fees are paid, and the final order and the resolution are recorded with the county auditor. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.060).

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1 D. The clerk of the council will schedule a public hearing on the resolution to vacate. The
2 county engineer will after its arrival in the council office, with provide public notice to be
3 given as provided in accordance with Chapter 36.87 RCW.

4
5 E. After the public hearing, the Whatcom County council shall consider the resolution to
6 vacate petition in resolution form. Action on the resolution will be the eCouncil's final action
7 in the matter.

8
9 F. The petition shall be deemed to have been denied if a motion to approve of the
10 resolution fails, or if by other means a majority of the council denies approval of the
11 resolution or petition. If the engineer recommends, by resolution, that a petition be denied
12 and the council disagrees with the engineer's recommendation to deny, the council may
13 amend the resolution to indicated that it is approving of the petition despite the engineer's
14 recommendation.

15
16 G. If the Whatcom County council passes the resolution to vacate, the county engineer, or
17 the county engineer's designee, will prepare a preliminary order of vacation. If the
18 approved resolution contains and there is a provision seeking or requiring payment by the
19 applicant of further costs beyond those covered by the petition fee or appraised the value of
20 the area being vacated, the county engineer clerk of the council shall notify the applicant
21 that they/he/she have/six calendar months in which to pay for such costs. At the time of
22 the hearing the Whatcom County council may waive payment of the appraised value, or any
23 portion thereof, if it finds that the granting of such vacation will be of some benefit to
24 Whatcom County. Said waiver shall be included as part of the resolution approving of the
25 vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior code §
26 7.40.070).

27
28 H. If the petitioner applicant payssubmits the total amount -such money as is owed to the
29 county within the six calendar months after the date of passage of the resolution, or if upon
30 passage the resolution no money is if owed the county by the petitioner, the county
31 engineer clerk of the council shall prepare a final an-order of vacation and shall cause have
32 it, along with the resolution, to be recorded by the Whatcom eCounty Auditor. If the
33 petitioner applicant fails to make a payment as required, the Ceouncil's authorization of the
34 vacation becomes null and void.

35
36 I. The vacation becomes official only after a final order of vacation and the resolution to
37 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)

38
39 12.20.060 Resolution requirements.
40 The resolution shall contain the following information, in addition to the requirements of
41 RCW 36.87.040:

42
43 A. The petitioner's name and mailing address, the date the petition was filed with the
44 transportation department, a statement that the application and report fee has been paid,
45 and a short description of the roads or portion of roads to be vacated;

46
47 B. A legal description of the roads or portions thereof to be vacated;

1
2 C. A statement that the applicant has six calendar months from the date the resolution is
3 passed to pay any remaining fees to the Whatcom County council office, with checks made
4 payable to the Whatcom County treasurer, prior to the vacation becoming effective;
5 including but not limited to the appraised value of the area sought to be vacated;
6

7 D. A statement that the petitioner has met all of the petition requirements as set forth by
8 this chapter, and by all other applicable laws;
9

10 E. The fair market value of the area sought to be vacated as determined by appraisal;
11

12 F. The classification of the road area and the nature of the county's interest therein,
13 according to the following classification:
14

15 1. Class A. Public expenditure made;
16

17 2. Class B. No public expenditures made or nonascertainable from records;
18

19 3. Class 1. No part thereof lies in any plat;
20

21 4. Class 2. Part or all lies within a platted subdivision;
22

23 5. Class 3. Did not remain unopened for public use for a period of five years after the
24 authority was granted for opening it;
25

26 6. Class 4. Remained unopened for public use for five or more years after the order made or
27 authority granted for opening it;
28

29 7. Class 5. Is contained within that portion of a plat which is to be replatted;
30

31 8. Class 6. Abandoned in fact due to relocation of right-of-way;
32

33 9. Class 7. Informalities exist in the records of title which are construed to invalidate and
34 divest the public of any right, title or interest in the right-of-way;
35

36 G. A statement that the vacation does not become effective until the fees are paid, and the
37 final order and the resolution are recorded with the county auditor. (Ord. 94-059-Exh. A;
38 Ord. 93-080-Exh. P; prior code § 7.40.060);
39

40 12.20.070 Payment of costs when:

41 Recompense in the amount of the appraised value and all certified costs and expenses
42 incurred in the proceedings above and beyond those covered by the application and
43 appraisal fee shall be tendered within six months of the hearing on the petition for vacation;
44 provided, however, that at the time of the hearing the county council may waive payment of
45 the appraised value, or any portion thereof, if it finds that the granting of such vacation will
46 be of some specific benefit to Whatcom County. Said waiver shall be included as a part of

1 the resolution approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-
2 15 § 1; prior code § 7.40.070).
3



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-590

File ID:	AB2021-590	Version:	1	Status:	Agenda Ready
File Created:	10/04/2021	Entered by:	JLassite@co.whatcom.wa.us		
Department:	Council Office	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Ordinance imposing a second interim moratorium on the acceptance and processing of permit applications for new or expanded recreational cannabis growing and/or processing facilities which are proposed to operate outdoors or in greenhouses

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance prohibits, on an interim basis, the filing, acceptance, or processing of permit applications for conversion of land or water, new building or structure permits, or other County permits or authorizations for recreational marijuana production and/or processing facilities, which are proposed to operate in any of the following: (1) open or cleared ground, (2) a non-rigid greenhouse, (3) a greenhouse with rigid walls, a roof and doors, or (4) similar type greenhouse structures. The interim moratorium shall not apply to applications that were filed and determined to be complete prior to the effective date of this ordinance and vested pursuant to Washington statutes, or those for minor tenant improvement permits associated with existing, permitted facilities. For the purposes of this ordinance, a minor tenant improvement permit may include new or replaced equipment or other structural alterations that do not expand the area of the facility or change the use from previous County approvals. This is the second interim ordinance establishing this moratorium. This interim ordinance shall be effective for not longer than six months following its effective date, but may be renewed for one or more six-month periods if subsequent public hearings are held and findings of fact are made prior to each renewal.

HISTORY OF LEGISLATIVE FILE

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

ORDINANCE NO. _____

**IMPOSING A SECOND INTERIM MORATORIUM ON THE ACCEPTANCE AND
PROCESSING OF PERMIT APPLICATIONS FOR NEW OR EXPANDED RECREATIONAL
CANNABIS GROWING AND/OR PROCESSING FACILITIES WHICH ARE PROPOSED
TO OPERATE OUTDOORS OR IN GREENHOUSES**

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, amending Chapter 69.50 RCW and providing the regulatory framework for cannabis producers, processors, and retailers to become licensed by the Washington State Liquor and Cannabis Board ("WSLCB"); and,

WHEREAS, on November 16, 2013, the WSLCB adopted final cannabis licensing rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013 and December 18, 2013, the WSLCB accepted cannabis license applications for cannabis production, processing and retail facilities. Whatcom County began receiving notifications of proposed cannabis facilities from the WSLCB in midDecember 2013, and the WSLCB began issuing cannabis producer, processor, and retail licenses to qualified applicants in March of 2014; and,

WHEREAS, on January 16, 2014, the Washington State Attorney General issued an opinion stating that Initiative 502 does not preempt counties from banning or placing additional regulatory requirements on cannabis related businesses within their jurisdictions; and,

WHEREAS, the Prosecuting Attorney and Planning and Development Services (PDS) had at the time implemented a zoning interpretation policy, which stated that PDS would regulate cannabis proposed uses as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County, it became evident that many of those proposed locations could conflict with other surrounding uses; and,

WHEREAS, on February 11, 2014, the Whatcom County Council adopted Ordinance 2014-011, an emergency ordinance imposing a moratorium on the acceptance of all building and/or land use applications that pertain to cannabis producers, processors, retailers and medical cannabis collective gardens; and,

WHEREAS, the County developed and implemented several sets of interim regulations during that time, though none were deemed appropriate by the Council as permanent regulations; and,

WHEREAS, on March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006, which contains the current County zoning regulations for recreational cannabis type uses, treating cannabis similar to other agricultural products; and,

WHEREAS, Whatcom County Code (WCC) 20.97.227 defines marijuana production as a facility licensed by the state Liquor and Cannabis Board to produce, harvest, trim, dry, cure, and package marijuana, and sell marijuana at wholesale to state-licensed marijuana processors and other state licensed marijuana producers; and,

WHEREAS, WCC 20.97.227 states marijuana production may take place either indoors within a fully enclosed secured facility or a greenhouse with rigid walls, a roof and doors, or outdoors in non-rigid greenhouses, other structures or an expanse of open or cleared ground fully enclosed by a physical barrier; and,

1
2 **WHEREAS**, Ordinance 2015-006 allows for the production and processing of
3 cannabis in the Rural (administrative uses), Rural Forestry (permitted uses) and Agriculture
4 zone districts (permitted uses), subject to a proposed facility meeting several stated use
5 standards. Such standards include odor controls (for indoor grows only), lighting, traffic and
6 parking control measures, as well as setbacks of 1,000 feet from community centers and
7 300 feet from residences not located on the same property. The ordinance also allowed for
8 the production and processing of marijuana in the Rural Industrial and Manufacturing, Light
9 Impact Industrial, and Heavy Impact Industrial districts as permitted uses, subject to odor
10 control measures (for indoor grows); and,

11
12 **WHEREAS**, the WSLCB is no longer issuing new licenses, existing licenses
13 throughout Washington State can be transferred and Whatcom County was notified by the
14 WSLCB of approximately 30 recreational marijuana production and/or processing renewal
15 licenses last year (2020) within unincorporated Whatcom County; and,

16
17 **WHEREAS**, while earlier licensees were small, local producers, their licenses now
18 appear to be being transferred to larger operators with more capital who are buying up the
19 earlier licenses and expanding and/or changing operations and/or locations; and,

20
21 **WHEREAS**, over the last few weeks the Council, Executive, Planning Commission,
22 and PDS have received complaints from residents adjacent to existing and proposed
23 cannabis facilities regarding excessive odor, lighting, and potential water usage, suggesting
24 that the County's cannabis regulations may not be sufficient; and,

25
26 **WHEREAS**, on March 23, 2021, the County Council adopted the 2021 Docket, a
27 component of the PDS work plan, including item PLN2021-00009, to "Review and revise
28 *Whatcom County Code relating to marijuana growing and processing in rural areas.*
29 *Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate*
30 *growing and processing facilities as an agricultural or non-agricultural use. Consider*
31 *compatibility with GMA and County Comprehensive Plan.*" However, due to the pandemic,
32 the Planning Commission and County Council have backlogs of other issues to address, and
33 PDS will need time to work with the community to properly develop and process any
34 potential regulatory amendments; and,

35
36 **WHEREAS**, pursuant to the Washington State Constitution, the general police
37 powers granted to counties empower and authorize Whatcom County to adopt land use
38 controls to provide for the regulation of land uses within the County and to provide that
39 such uses shall be consistent with applicable law; and,

40
41 **WHEREAS**, RCW 36.70A.390 authorizes a county governing body to adopt moratoria
42 and provides that such a moratorium may be effective for up to one year if a work plan is
43 developed and further that such a moratorium may be renewed for one or more six-month
44 periods if a subsequent public hearing is held and findings of fact are made prior to
45 renewal; and

46
47 **WHEREAS**, on April 20, 2021, the County Council adopted Ordinance No. 2021-023,
48 imposing a six-month interim moratorium prohibiting the filing, acceptance, or processing of
49 new applications for permits or authorizations for recreational marijuana production and/or
50 processing facilities which are proposed to operate outdoors or in greenhouses; and

51
52 **WHEREAS**, due to the COVID-19 backlogs referenced above, PDS still needs more
53 time to properly develop and process any potential regulatory amendments; and
54
55
56

1 **WHEREAS**, the County Council finds that a second interim moratorium is necessary
2 for the protection of public health and safety and to prevent development applications from
3 vesting under current law and thus subverting the purpose of the proposed update to the
4 policies and regulations for cannabis growing and processing operations; and,
5

6 **WHEREAS**, the Whatcom County Council is required by RCW 36.70A.390 to hold a
7 subsequent public hearing and make findings of fact prior to renewing this moratorium;
8

9 **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts
10 the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW
11 36.70A.390.
12

13 **BE IT FURTHER ORDAINED** by the Whatcom County Council that a second interim
14 moratorium is hereby imposed prohibiting the filing, acceptance, or processing of new
15 applications for conversion of land or water, new building or structure permits, or other
16 County permits or authorizations for recreational marijuana production and/or processing
17 facilities which are proposed to operate in any of the following: (1) open or cleared ground,
18 (2) a non-rigid greenhouse, (3) a greenhouse with rigid walls, a roof and doors, or (4)
19 similar type greenhouse structures. The interim moratorium shall not apply to applications
20 that were filed and determined to be complete prior to the effective date of this ordinance
21 and vested pursuant to Washington statutes, or those for minor tenant improvement
22 permits associated with existing, permitted facilities. For the purposes of this ordinance, a
23 minor tenant improvement permit may include new or replaced equipment or other
24 structural alterations that do not expand the area of the facility or change the use from
25 previous County approvals.
26

27 **BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence,
28 clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by
29 any court of competent jurisdiction; such decision shall not affect the validity of the
30 remaining portions of this ordinance, and if the provisions of this ordinance are found to be
31 inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.
32

33 **BE IT FINALLY ORDAINED** that this interim ordinance shall be effective for not
34 longer than six months following its effective date, but may be renewed for one or more six-
35 month periods if subsequent public hearings are held and findings of fact are made prior to
36 each renewal.
37

38 **APPROVED** this _____ day of _____, 2021.

39 **ATTEST:**

40 **WHATCOM COUNTY COUNCIL**
41 **WHATCOM COUNTY, WASHINGTON**

42
43
44 _____
45 Dana Brown Davis, Clerk of the Council

46
47 _____
48 Barry Buchanan, Council Chair

49 **APPROVED AS TO FORM:**

50 **WHATCOM COUNTY EXECUTIVE**
51 **WHATCOM COUNTY, WASHINGTON**

52 _____
53 Civil Deputy Prosecutor

54 _____
55 Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-576

File ID:	AB2021-576	Version:	1	Status:	Agenda Ready
File Created:	09/27/2021	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:	10/12/2021	Enactment #:			

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

TITLE FOR AGENDA ITEM:

Resolution adopting the 2022 Annual Construction Program (ACP)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution adopting the Whatcom County 2022 Annual Construction Program (ACP). The ACP is an integral part of the County budget process and reflects the first year of the adopted 2022-2027 Six Year Transportation Improvement Program

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: Staff memo, Proposed resolution, Annual Construction Plan, Plan Narratives

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



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

Memorandum

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

Through: Jon Hutchings, Director *JH*

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

Date: September 29, 2021

Re: 2022 Annual Construction Program (ACP)

Requested Action:

Introduction on October 12, 2021, followed by a Public Hearing and adoption on October 26, 2021.

Background and Purpose:

RCW 36.81.130 requires the adoption of the Annual Construction Program (ACP). Adoption of this program is an element of the County budget process.

This ACP is identical to the 1st year of the Six Year Transportation Improvement Program (STIP) approved on September 28, 2021.

Information:

A proposed resolution is enclosed for your consideration. In addition, each project that has funding available in 2022 has a project summary sheet for your review.

If you have questions or require additional information, please contact me at the number provided above.

PROPOSED BY: Public Works

INTRODUCED: 10/12/2021

RESOLUTION NO. _____

APPROVING THE WHATCOM COUNTY 2022 ANNUAL CONSTRUCTION PROGRAM

WHEREAS, pursuant to RCW 36.81.130, the Whatcom County Engineer did file with the Whatcom County Council a recommended plan for laying out, construction, maintenance and special maintenance of County roads for the fiscal year of 2022; and,

WHEREAS, the Whatcom County Council held a public hearing on the 26th day of October, 2021, and has considered the testimony given as well as the recommended plan; and,

WHEREAS, the Whatcom County Council had determined that said plan is necessary as nearly as practicable to the Whatcom County 2022-2027 Six-Year Transportation Improvement Program, approved by Resolution 2021-039 on September 28, 2021.

NOW, THEREFORE, BE IT RESOLVED that the 2022 Whatcom County Annual Construction Program is hereby approved as shown on the attachment hereto; and

BE IT FURTHER RESOLVED that no changes be made in the program without the unanimous vote of the Whatcom County Council; and

BE IT FINALLY RESOLVED that upon approval, the 2022 Annual Construction Program be filed with the County Road Administration Board per WAC 136-16-040.

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 as to form CQ, emailed 9.30.21

Chris Quinn, Senior Civil Deputy Prosecutor Attorney

Whatcom County
2022
Annual Construction Program
WAC 136-16

(A) TOTAL CONSTRUCTION DONE (total sum of column 13 + column 14): \$22,650,000.00
(B) COMPUTED COUNTY FORCES LIMIT: \$1,801,005.50
(C) TOTAL COUNTY FORCES CONSTRUCTION (total sum of column 14): \$145,000.00

Date of Environmental Assessment:
Date of Final Adoption:
Ordinance/Resolution Number:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)						
Annual Program Item No.	10 Year Road Program Item No.	Project Name	Road #	Road Segment Information	EMP	BMP	FEC	Project Length(mi)	Project Type Code	Environmental Assessment	County Road Funds	Other Funds Amount	Program Source	PE & CE (\$95.10)	Right of Way (\$95.20)	Estimated Expenditures Dollars	Construction Contract	County Forces	Grand Total (All 1995)	
1	R1	CRP #9107001 Birch Bay Drive & Pedestrian Facility from Lora Lane to Cedar Avenue	20010	Road Name: Birch Bay Drive From: Lora Lane To: Cedar Avenue	4.26	2.08	1*	1.58	P&T FP DR Other	S	\$870,000.00			\$200,000.00		\$1,500,000		\$0	\$350,000.00	
2	R2	CRP #914002 East Smith Road & Hunnegan Road	55080	Road Name: East Smith Road From: East Smith Road To: Hunnegan Road	2.06	1.86	07	0.40	DR IS Hlm Safety	S	\$2,300,000.00	\$1,000,000.00	HSIP		\$400,000.00	\$150,000.00	\$3,750,000			\$4,300,000.00
3	R3	CRP #917001 Marine Drive, Locust Avenue to Alderwood Avenue	12790	Road Name: Marine Drive From: Locust Avenue To: Alderwood Avenue	4.57	3.92	16	0.65	RL SW P&T Safety	S	\$1,041,000	\$2,509,000.00	STP(11)		\$400,000	\$50,000	\$3,100,000			\$3,550,000.00
4	R4	CRP #919005 Samish Way & Galbraith Lane	44060	Road Name: Samish Way From: Samish Way To: Galbraith Lane	1.08	1.41	1*	0.27	IS Other Safety Hlm	S	\$600,000				\$10,000	\$10,000	\$10,000			\$60,000.00
5	R5	CRP #921022 Marshall Hill Road Slide Repair/Culverts Replacement	89260	Road Name: Marshall Hill Road From: Marshall Hill Rd To: Marshall Hill Rd	0.70	0.60	09	0.10	DR Other	S	\$725,000.00				\$100,000	\$25,000	\$590,000	\$10,000		\$725,000.00
6	R6	CRP #9106001 Birch Bay Lynden Rd & Blaine Rd	21560	Road Name: Birch Bay Lynden Rd From: Birch Bay Lynden Rd To: Blaine Rd	1.25	1.00	17	0.25	IS Hlm SW Safety DR	S	\$650,000				\$400,000	\$250,000				\$650,000.00
7	R7	CRP #918019 Smith Road & Northwest Drive	74050	Road Name: Smith Road From: 0 To: 0 Road Name: Northwest Drive From: 0 To: 0	3.70	3.50	16	0.40	IS Hlm Safety	S	\$25,000				\$25,000					\$25,000.00
8	R8	CRP #920016 Chief Martin Road, Cages Road to Kenna Road	14110	Road Name: Chief Martin Road From: Cages Road To: Kenna Road	2.50	0.00	06	2.50	DR Safety	S	\$100,000				\$100,000					\$100,000.00
9	R9	CRP #914001 Slater Road & Northwest Drive	14760	Road Name: Slater Road From: Slater Road To: Northwest Drive	8.29	8.00	16	0.40	RC FP IS Hlm Safety	S	\$5,000				\$5,000					\$5,000.00
10	R10	CRP #922018 Birch Bay Drive Crosswalk	20010	Road Name: Birch Bay Drive From: Birch Bay Drive To: Birch Bay Drive	3.30	3.29	16	0.01	Safety Other	S	\$50,000				\$50,000					\$50,000.00
11	R11	CRP #912017 Lummi Nation Transportation Projects			N/A		N/A				\$2,000,000			\$350,000	\$150,000	\$1,500,000			\$2,000,000.00	
12	R12	CRP 911002 Point Roberts Transportation Improvements			N/A		N/A				\$150,000			\$50,000		\$90,000	\$10,000		\$150,000.00	
13	R13	CRP #916007 Hemmu Road Flood Mitigation	56320	Road Name: East Hemmu Road From: East Hemmu Road To: East Hemmu Road	2.60	2.30	08	0.30	DR Other	S	\$125,000				\$25,000		\$90,000	\$10,000		\$125,000.00

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road Segment Information	FMP	Project Length (mi.)	Project Type Code	Environmental Assessment	County Road Funds	Other Funds Amount	PE & CE (\$95,10)	Right of Way (\$95,20)	Estimated Expenditures Dollars	County Forces	Grand Total (All 595)
14	R14	CRP #915014 Fines Creek Road	Road Name: Fines Creek Road From: Fines Creek Road To: Fines Creek Road	2.45	2.65	19	0.20	2.45	2.65	19	0.20	2.45	2.65	19
15	R15	CRP #921001 Birch Bay Drive, Shindler to Shindler Road	Road Name: Birch Bay Drive From: Jackson Road To: Shindler Road	2.10	4.53	07	2.43	2.10	4.53	07	2.43	2.10	4.53	07
16	R16	CRP #921002 Marine Drive to Alderwood Avenue to Bridge No 172	Road Name: Marine Drive From: Alderwood Avenue To: Bridge No 172	3.37	3.92	06	0.55	3.37	3.92	06	0.55	3.37	3.92	06
17	R17	CRP #915013 Turkington Road Jones Creek	Road Name: Turkington Road From: Turkington Road To: Turkington Road	0.40	0.60	09	0.20	0.40	0.60	09	0.20	0.40	0.60	09
18	R18	CRP #921003 Truck Road, 2020 Flood Damage Repair	Road Name: Truck Road From: Truck Road To: Truck Road	0.40	0.60	16	0.20	0.40	0.60	16	0.20	0.40	0.60	16
19	R19	CRP #919002 Abbott Road, C-200 Improvements	Road Name: Abbott Road From: Abbott Road To: Abbott Road	3.70	3.90	09	0.20	3.70	3.90	09	0.20	3.70	3.90	09
20	R20	CRP #919001 Fennelle Road, C-200 Improvements	Road Name: Fennelle Road From: Fennelle Road To: Fennelle Road	2.50	3.82	08	1.32	2.50	3.82	08	1.32	2.50	3.82	08
21	R21	CRP #921004 Lake Louise, Austin Street to Lake Louise	Road Name: Lake Louise Road From: Austin Street To: Lake Louise	0.10	4.00	18	4.00	0.10	4.00	18	4.00	0.10	4.00	18
22	R22	CRP #921005 Austin Street to Cable Street	Road Name: Austin Street From: Austin Street To: Cable Street	0.10	0.37	16	0.37	0.10	0.37	16	0.37	0.10	0.37	16
23	R23	CRP #922001 Northwest Drive, Slater Rd. to Austin Rd.	Road Name: Northwest Drive From: Slater Road To: Austin Road	2.38	4.65	16	2.27	2.38	4.65	16	2.27	2.38	4.65	16
24	R24	CRP #922002 Hampton Road, City of Lynden UAB to Van Buren	Road Name: Hampton Road From: City of Lynden UAB To: Van Buren	0.14	4.79	06	4.65	0.14	4.79	06	4.65	0.14	4.79	06
25	R25	CRP #921019 Lakeway Drive, Lakeway Drive Improvements	Road Name: Lakeway Drive From: Lakeway Drive To: Lakeway Drive	0.00	1.49	16	1.49	0.00	1.49	16	1.49	0.00	1.49	16
26	R26	CRP #908011 Lincoln Road, Harborview Road to Blaine Road	Road Name: Lincoln Road From: Harborview Road To: Blaine Road	0.00	1.00	18	1.00	0.00	1.00	18	1.00	0.00	1.00	18
27	R27	CRP #922003 Small Area Paving												
28	R28	CRP #921007 South Pass Road	Road Name: South Pass Road From: South Pass Road To: South Pass Road	3.50	3.65	16	0.15	3.50	3.65	16	0.15	3.50	3.65	16
29	R29	CRP #922004 Birch Bay Drive/Lane Lane Culvert Replacement	Road Name: Birch Bay Drive From: Birch Bay Drive To: Lane Lane	2.08	2.69	17	0.61	2.08	2.69	17	0.61	2.08	2.69	17
30	R30	CRP #922005 Birch Bay Lynden Rd/Kickerville Rd	Road Name: Birch Bay Lynden Rd From: Birch Bay Lynden Rd To: Kickerville Rd	1.80	2.09	07	0.29	1.80	2.09	07	0.29	1.80	2.09	07
31	R31	CRP #922006 Corridor Intersection Alls Analysis												
32	R32	CRP #921020 Deer Trail Slide Damage Repair	Road Name: Deer Trail From: Deer Trail To: Deer Trail	0.55	0.91	09	0.36	0.55	0.91	09	0.36	0.55	0.91	09
33	B2	CRP #917004 Jackson Road/Tenell Creek Bridge No 81	Road Name: Jackson Road From: Jackson Road To: Jackson Road	0.00	0.10	18	0.10	0.00	0.10	18	0.10	0.00	0.10	18
34	B4	CRP #913006 North Lake Samish Bridge No 107	Road Name: North Lake Samish From: North Lake Samish To: North Lake Samish	0.01	0.11	08	0.10	0.01	0.11	08	0.10	0.01	0.11	08

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Program Item No.	Project Name	Road #	Road Segment Information Road Name	Project Type Code	Environmental Assessment	County Road Funds	Other Funds Amount	Program Source	PF & CF (\$95.10)	Right of Way (\$95.20)	Estimated Expenditures Dollars Construction Contract	County Forces	Grand Total (All 595)
35	B5	CRP #9210013 Goshen Road Anderson Creek Bridge No. 248	56140	Road Name: Goshen Road From: Goshen Road To: Goshen Road	Dr	S	\$200,000	\$300,000.00	BR	\$210,000	\$210,000			\$220,000
36	B10	CRP #9190016 Mosquito Lake Road Mosquito Lake Road Mosquito Lake Road	86190	Road Name: Mosquito Lake Road From: Mosquito Lake Road To: Mosquito Lake Road	FP	S	\$610,000			\$50,000	\$110,000	\$535,000	\$15,000	\$610,000
37	B11	CRP #9190017 North Fork Road Kenney Creek	89510	Road Name: North Fork Road From: North Fork Road To: North Fork Road	FP	S	\$70,000	\$210,000.00	FHRA	\$230,000	\$20,000			\$270,000
38	B12	CRP #921008 Deal Road Deal Road Deal Road	89500	Road Name: Deal Road From: Deal Road To: Deal Road	FP	S	\$95,000			\$75,000	\$20,000			\$95,000
39	B13	CRP #922007 Fox Road, Little Creek Fish Passage	22920	Road Name: Fox Road From: Fox Road To: Fox Road	FP	S	\$155,000			\$150,000	\$5,000			\$155,000
40	B14	CRP #921021 Nalle Road Friday Creek Bridge No. 106	41830	Road Name: Nalle Road From: Nalle Road To: Nalle Road	3R	S	\$860,000			\$100,000		\$490,000	\$10,000	\$600,000
41	F1	CRP #913008 Replacement of Washburn Creek & Terminal Modification			Ferry	I	\$649,000			\$649,000				\$649,000
42	F2	CRP #914015 Lummi Island Breakwater Replacement			Ferry	F	\$1,265,000	\$865,000.00	FBP	\$150,000		\$2,000,000		\$2,150,000
43	F3	CRP #919009 Rehabilitation of Gooseberry Terminal			Ferry	I	\$20,000			\$50,000				\$50,000
44	Y1	CRP #922008 Various Bridge Rehabilitation			Br	S	\$300,000			\$50,000		\$250,000		\$300,000
45	Y2	CRP #922009 Right of Way Acquisition				I	\$50,000				\$50,000			\$50,000
46	Y3	CRP #922010 Unanticipated Site Improvements				F	\$300,000			\$300,000		\$200,000	\$10,000	\$300,000
47	Y4	CRP #922011 Unanticipated Stormwater Quality Improvements				S	\$120,000			\$20,000		\$90,000	\$10,000	\$120,000
48	Y5	CRP #922012 Unanticipated Non-motorized Transportation Improvements			SW P&T Safety	I	\$60,000			\$10,000		\$40,000	\$10,000	\$60,000
49	Y6	CRP #922013 Fish Passage Projects			FP	S	\$50,000			\$50,000				\$50,000
50	Y7	CRP #922014 Swift Creek Transportation Impacts				S	\$100,000			\$10,000		\$90,000		\$100,000
51	Y8	CRP #922015 Railroad Crossing Improvements			Other 2R Safety	I	\$200,000			\$50,000		\$140,000	\$10,000	\$200,000
52	Y9	CRP #922016 Beam Guardrail			Safety	I	\$350,000			\$50,000		\$290,000	\$10,000	\$350,000
53	Y10	CRP #922017 ADA Barrier Removal			SW	F	\$200,000			\$50,000		\$150,000		\$200,000
							\$15,836,000	\$13,234,000		\$5,610,000	\$810,000	\$22,505,000	\$145,000	\$29,070,000

Birch Bay Drive and Pedestrian Facility CRP #907001

Construction Funding Year(s): 2022 - 2024

Project Narrative:

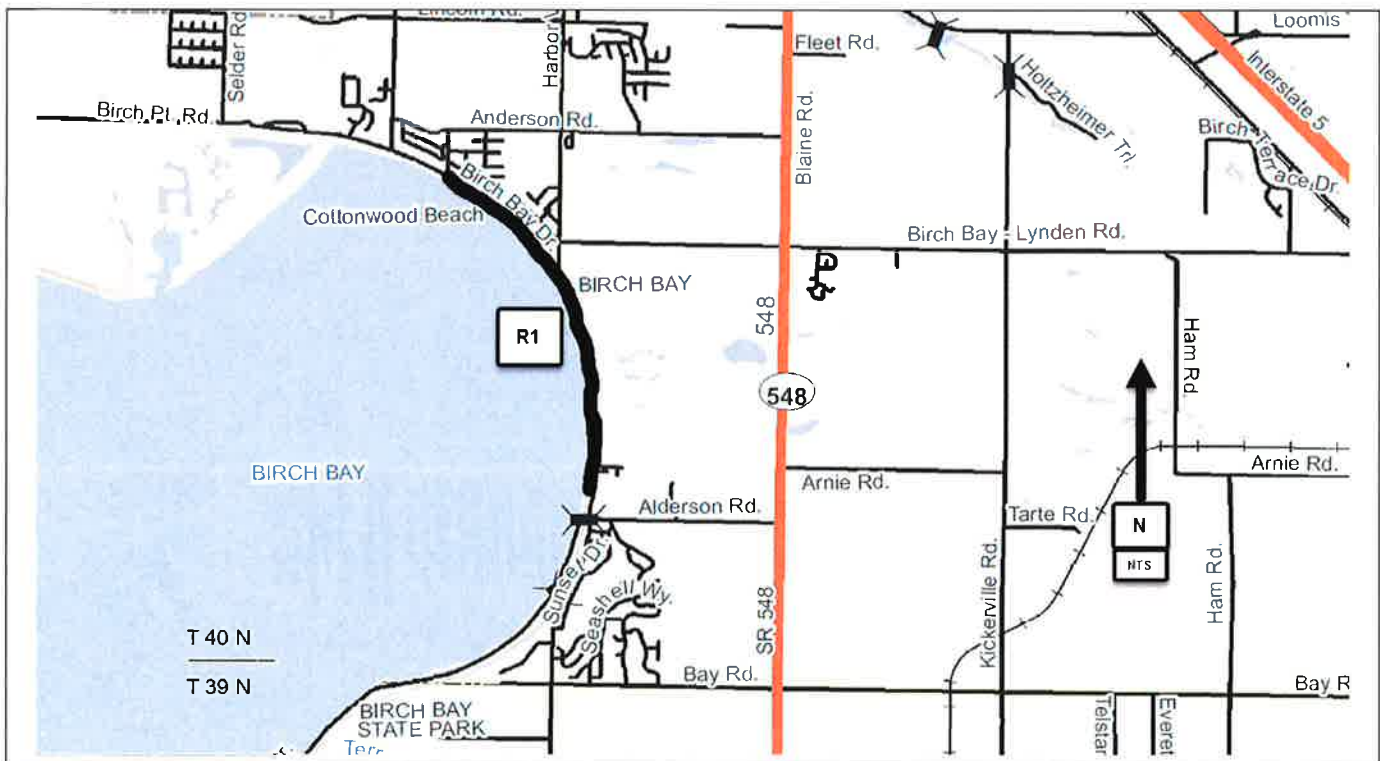
This project is located parallel to Birch Bay Drive from Cedar Avenue to the mouth of Terrell Creek, in Sections 30 and 31, T40N, R1E, and Sections 24 and 25, T40N, R1W. This is a 1.58 mile separated berm with pathway to encourage pedestrian use along Birch Bay Drive to support safety and to protect 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

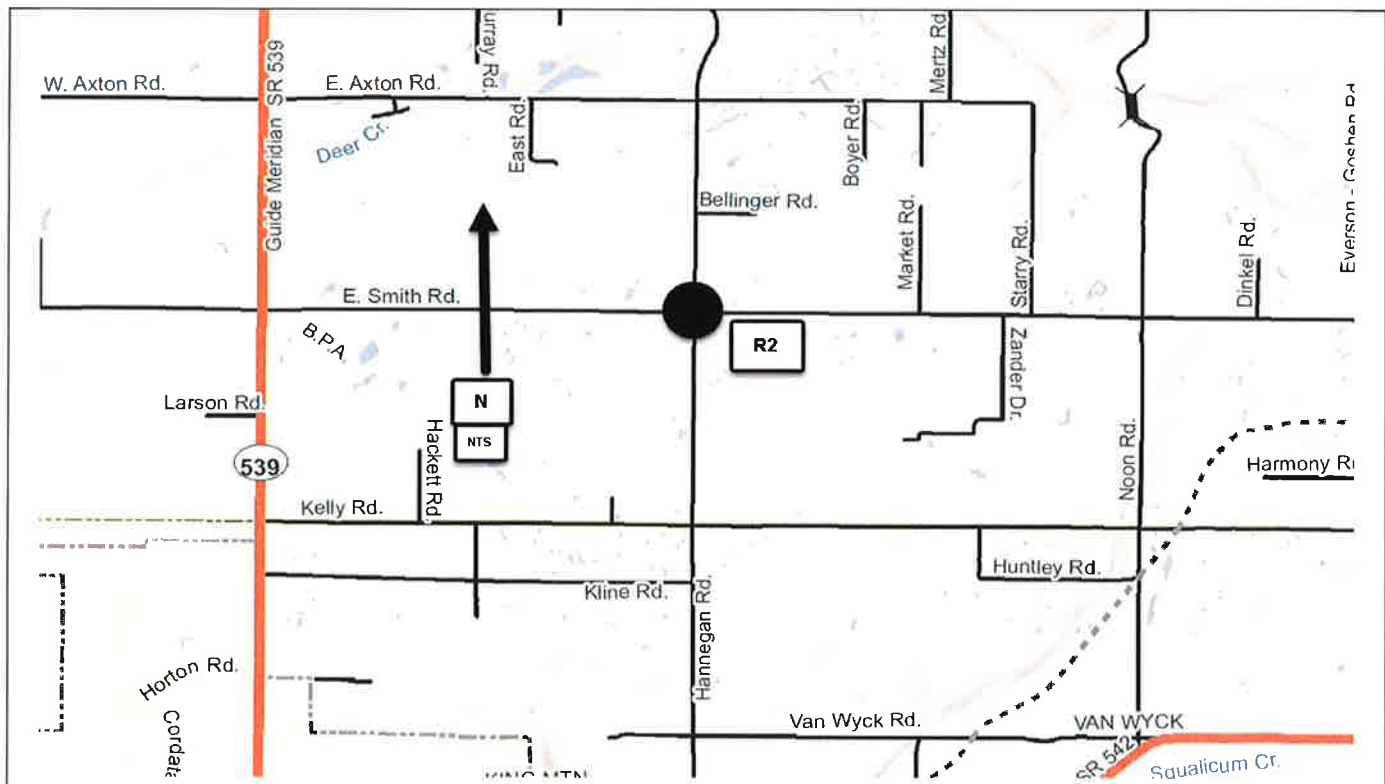
Funding Sources:

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
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Right-of-Way Acquisition (Estimate)	\$350,000
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County Forces (Estimate)	N/A
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Marine Drive Locust Avenue to Alderwood Avenue Reconstruction and Bike/Ped Facilities CRP # 917001

Construction Funding Year(s): 2022

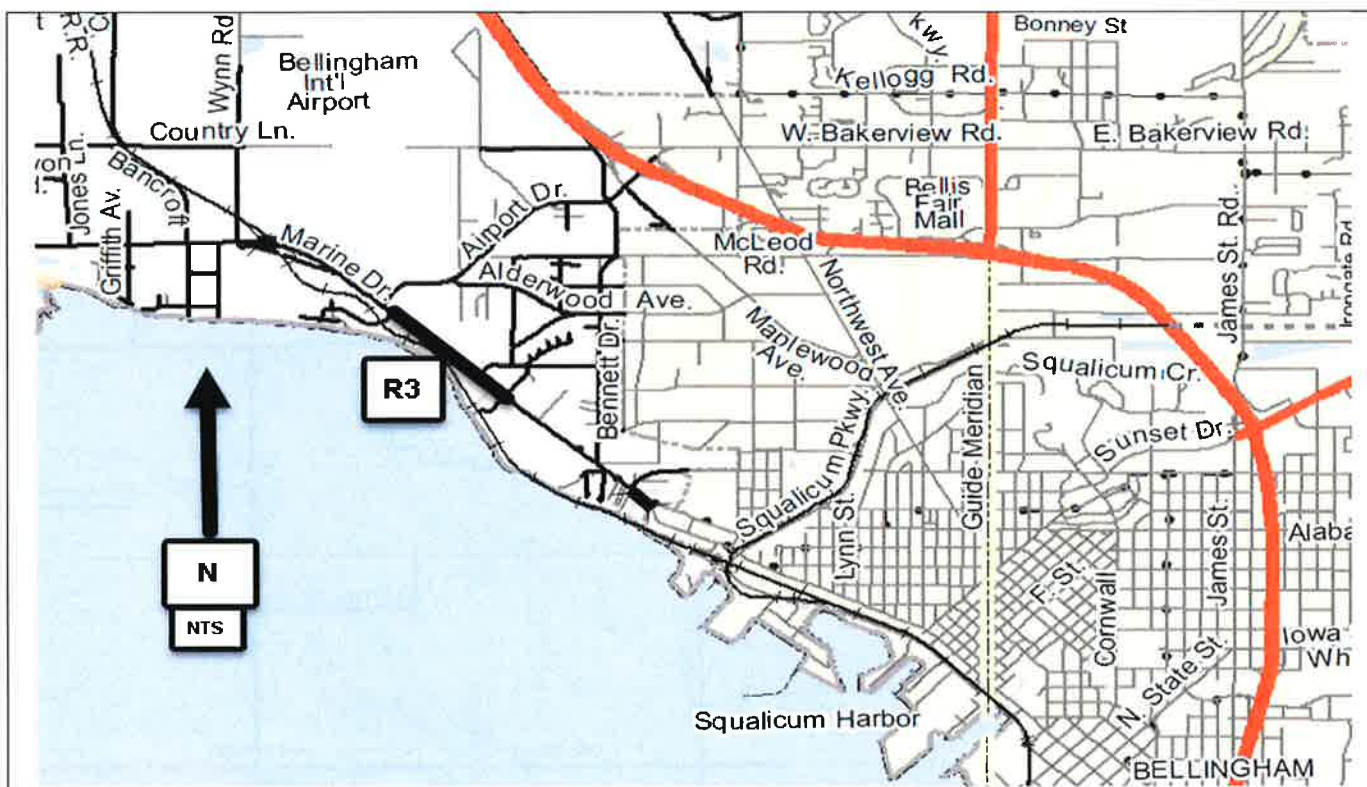
Project Narrative:

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	Funding Sources:	
Expenditures to Date: \$550,000	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

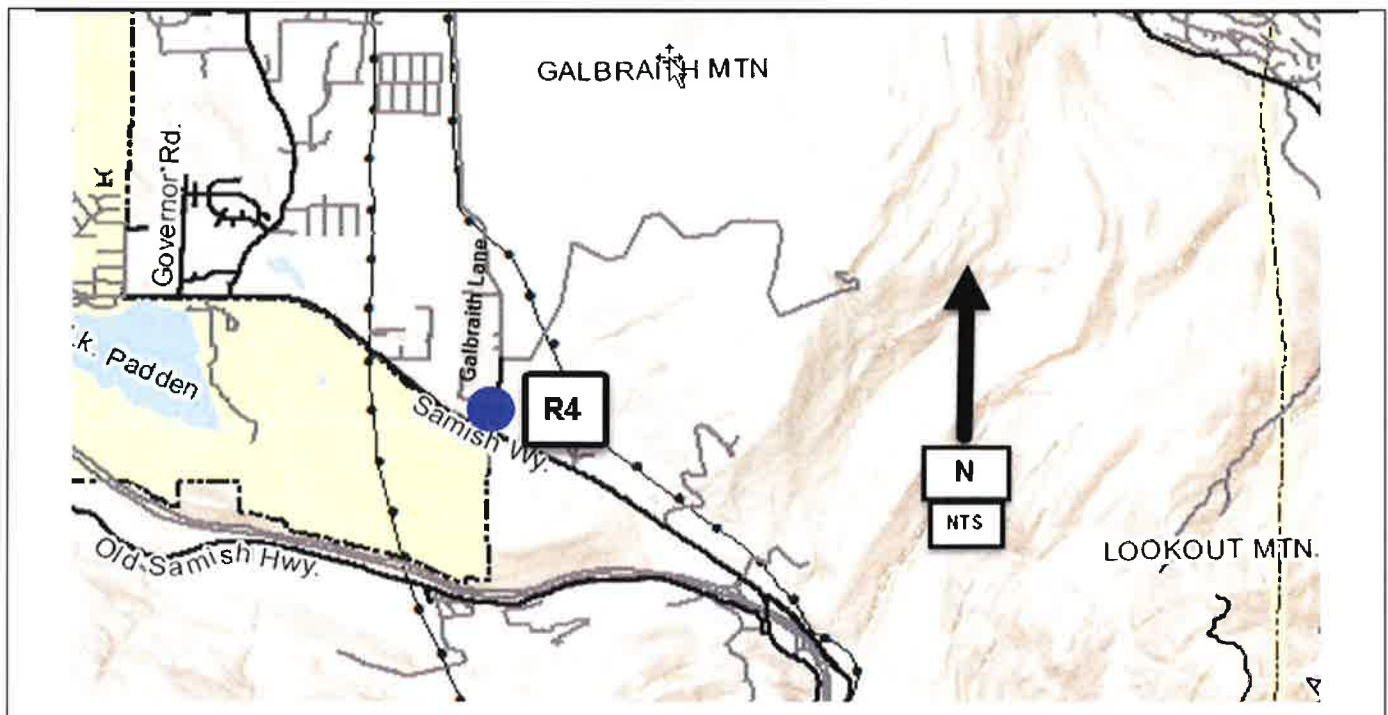
Funding Sources:

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

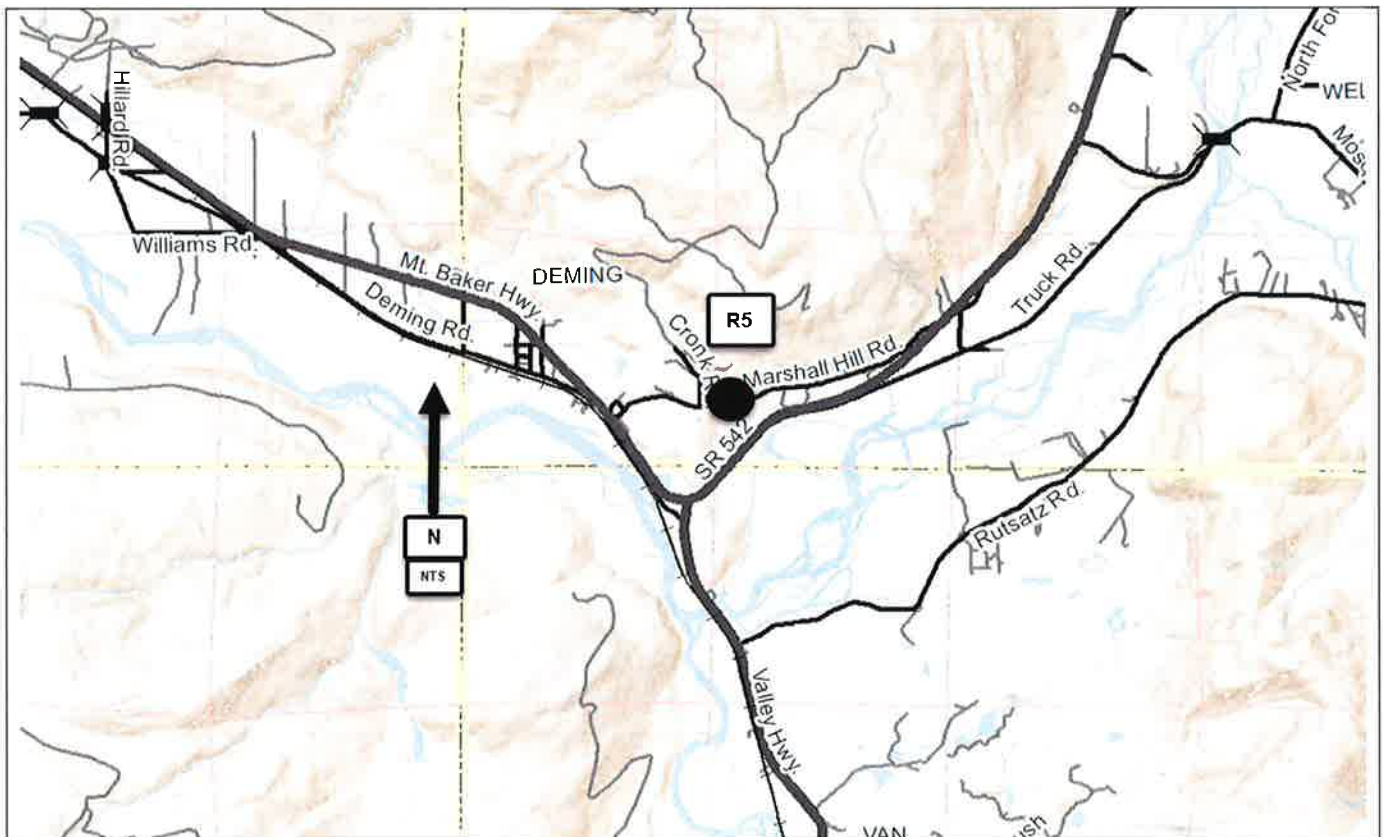
Funding Sources:

Federal	\$0
State	\$
Local	\$725,000

Environmental Permitting	SEPA
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Right-of-Way Acquisition (Estimate)	N/A
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County Forces (Estimate)	N/A
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Birch Bay Lynden Rd. & Blaine Rd. Intersection Improvements CRP # 906001

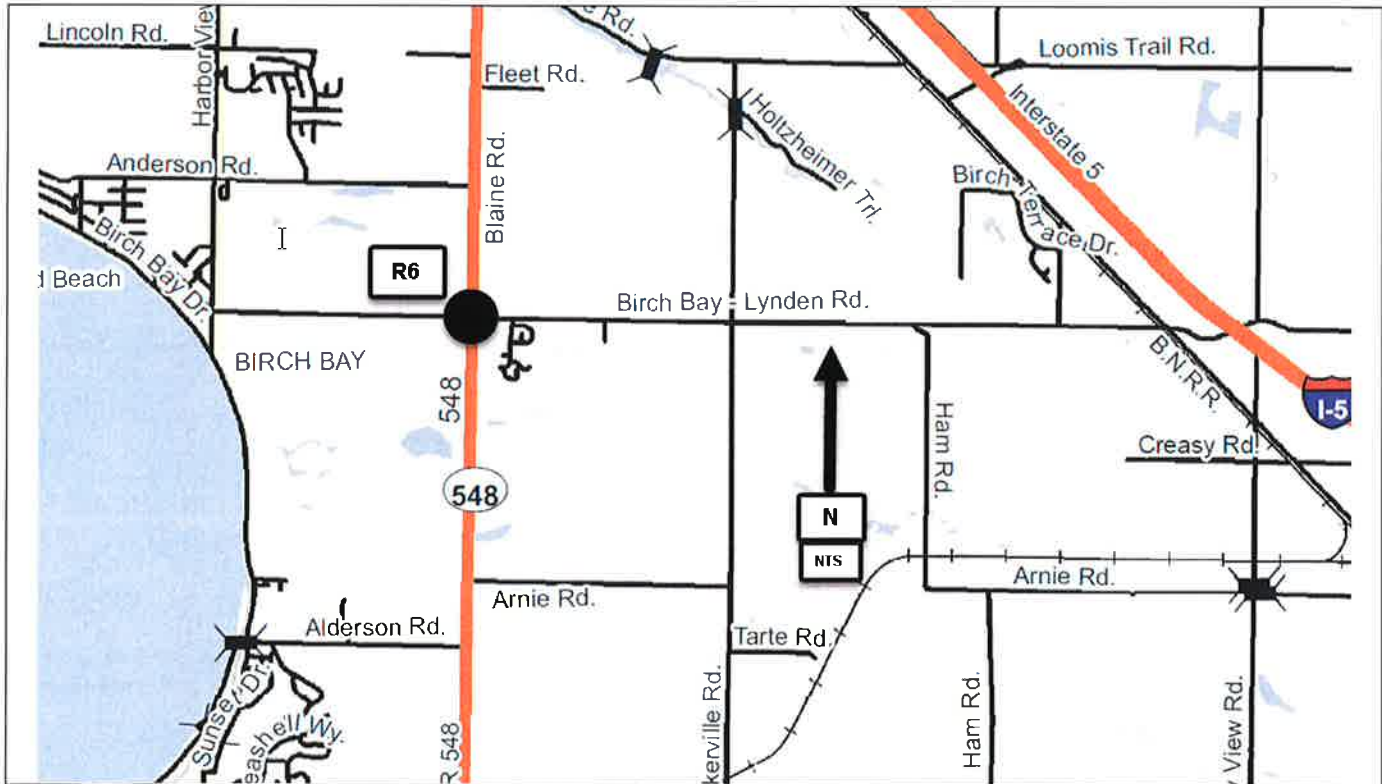
Construction Funding Year(s): 2024

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		Funding Sources:	
Expenditures to Date: \$89,000		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

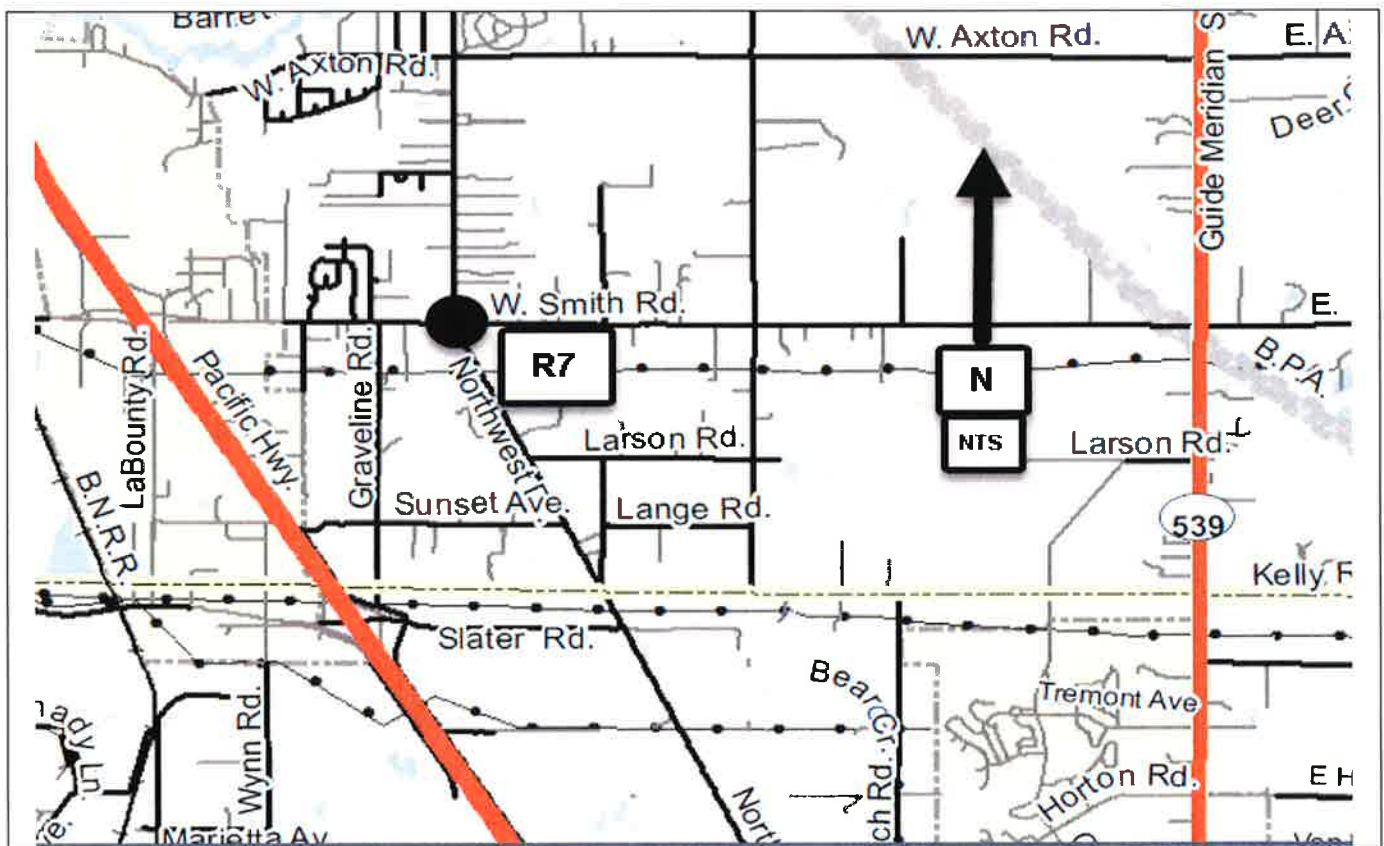
Project Narrative:

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		Funding Sources:	
Expenditures to Date: \$ 43,000		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

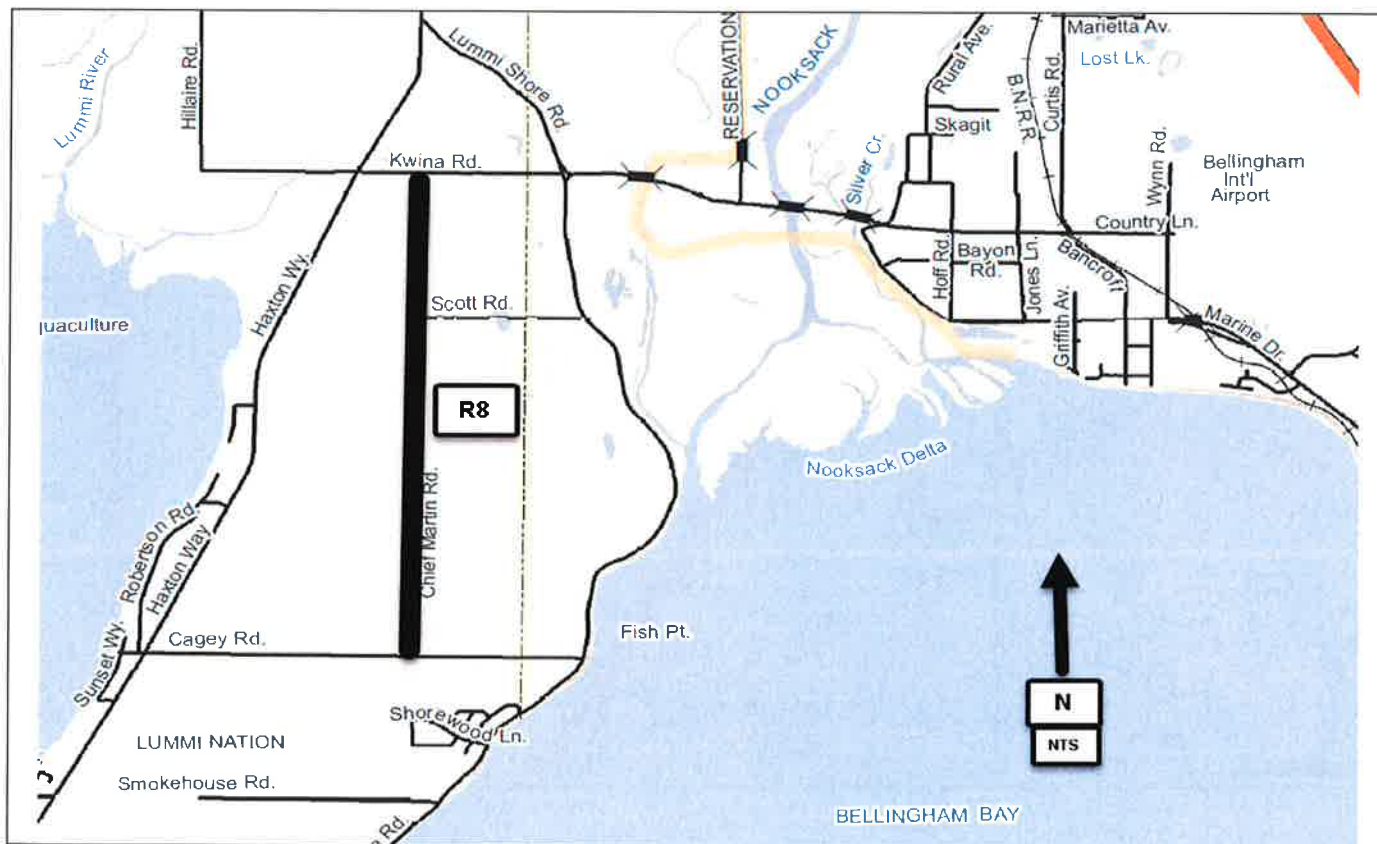
Funding Sources:

Federal	
State	
Local	\$100,000

Environmental Permitting	SEPA, ESA, HPA, Clrg/CAO
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Right-of-Way Acquisition (Estimate)	5,000
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County Forces (Estimate)	N/A
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Slater Road & Northwest Drive Intersection Improvements CRP # 918019

Construction Funding Year(s): TBD

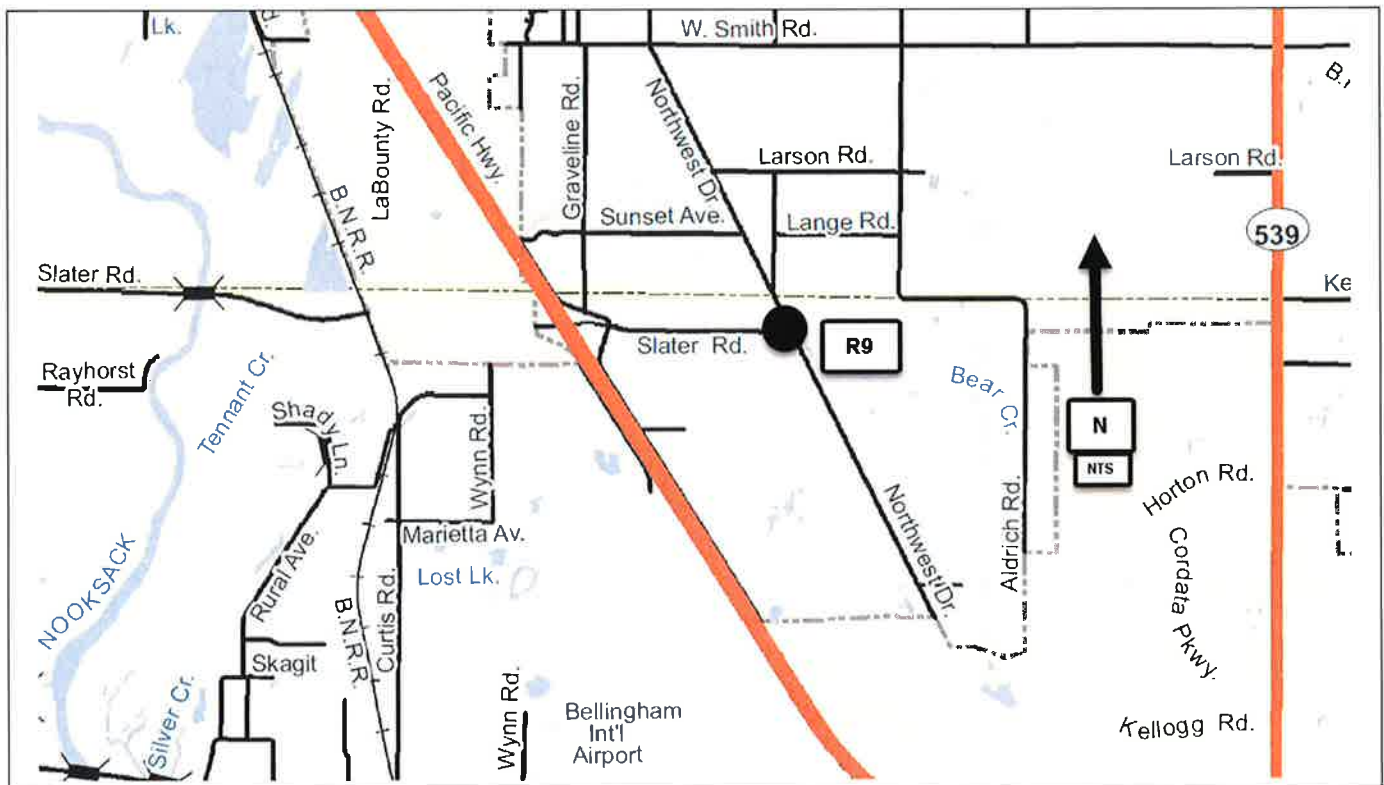
Project Narrative:

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	Funding Sources:	
Expenditures to Date:	\$ 22,000	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 #922018**

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.

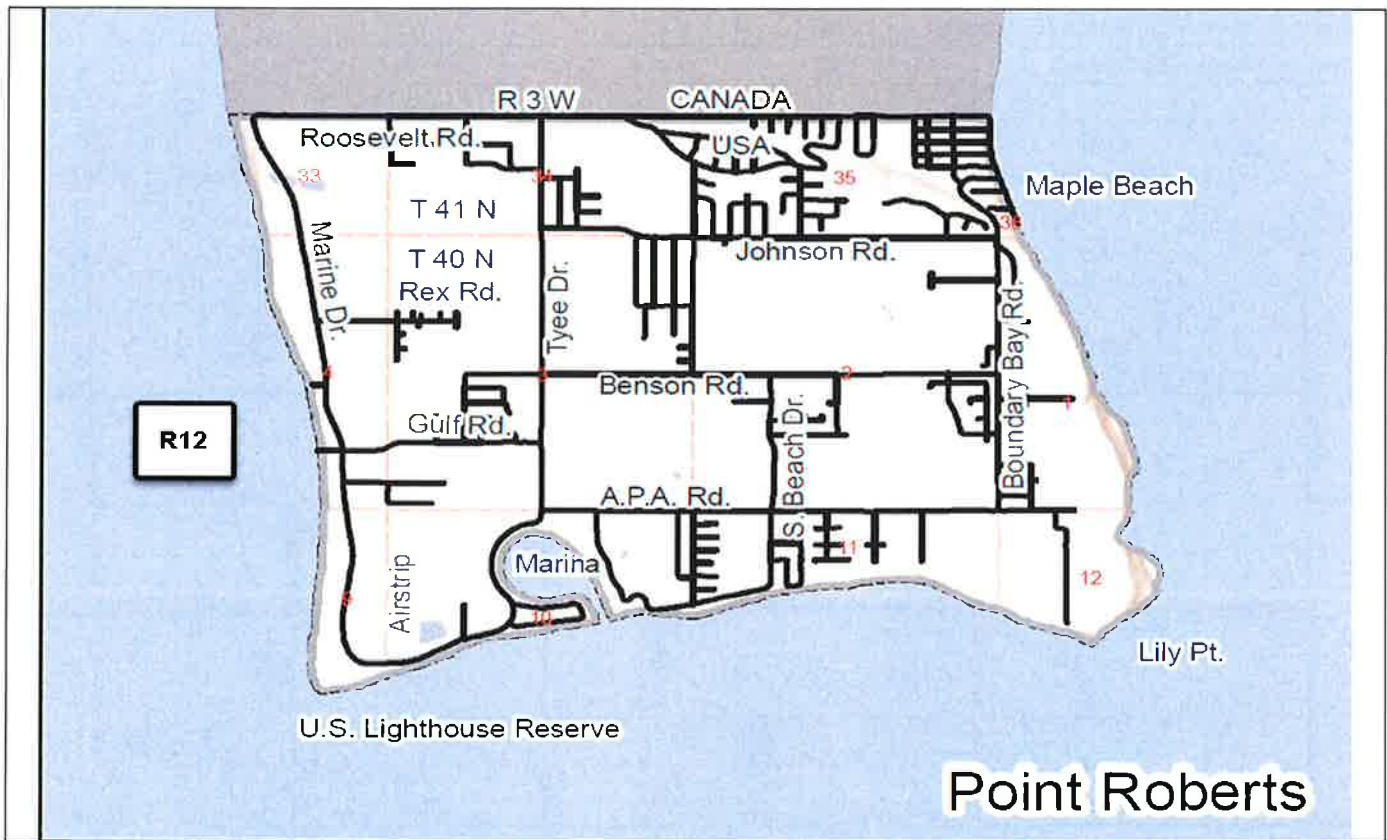
Total Estimated Project Cost: \$150,000

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.

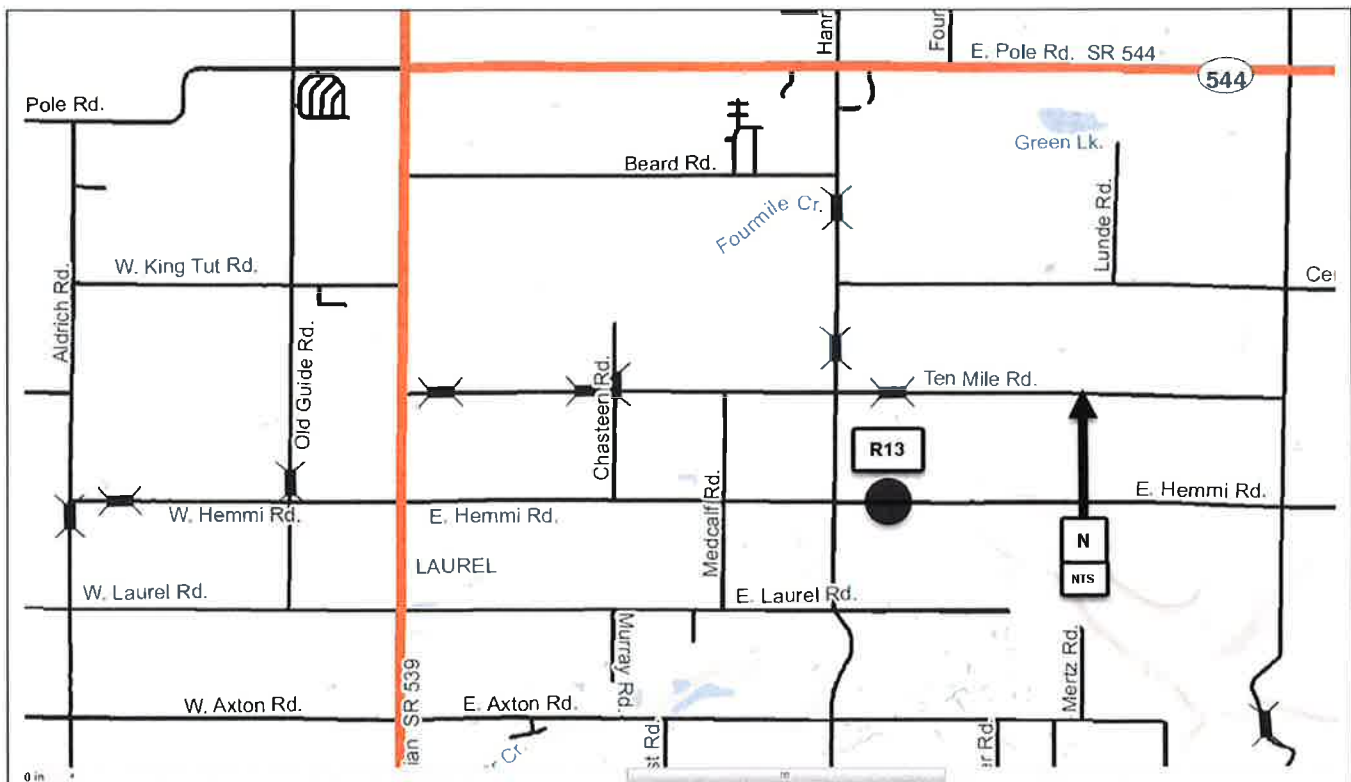
Total Estimated Project Cost: \$1,745,000

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:

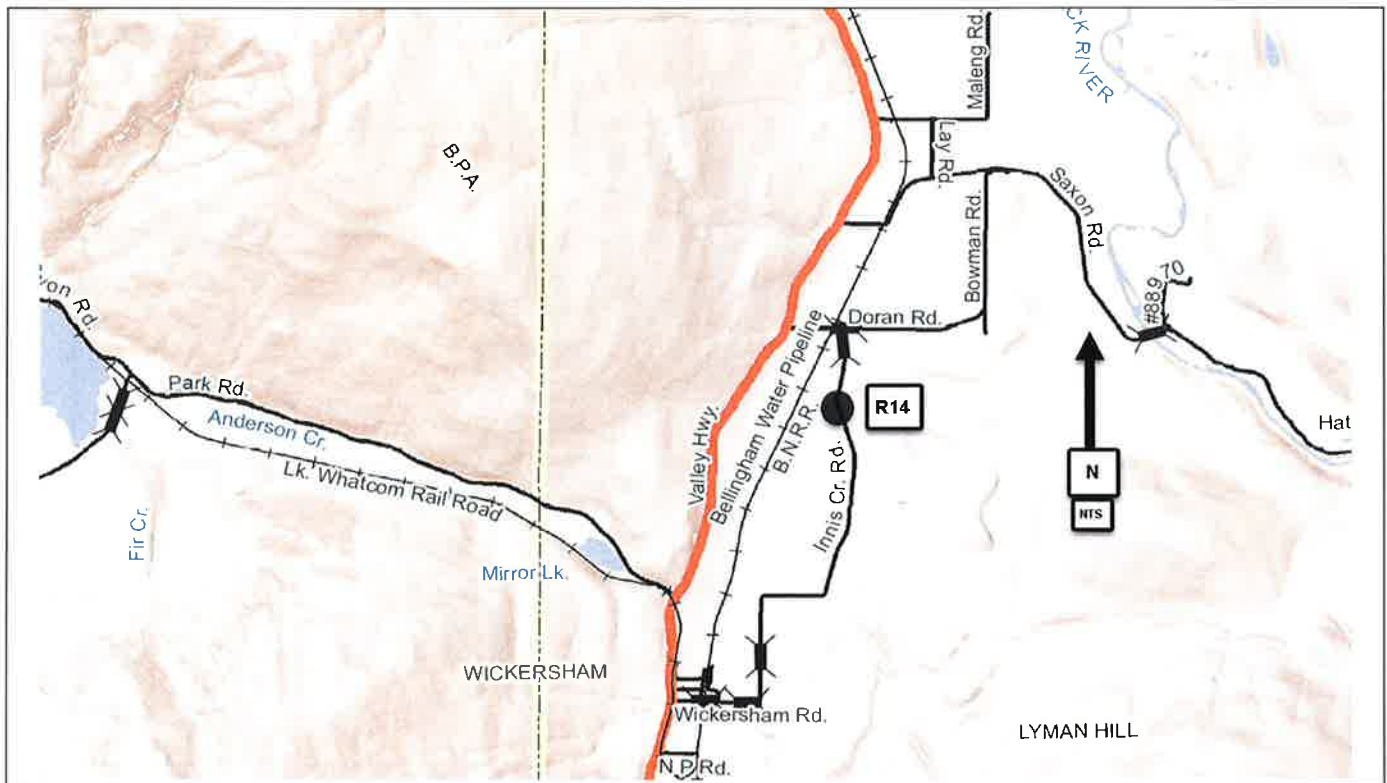
Preliminary design completed in 2019 with alternatives developed; however, environmental mitigation, due to presence of endangered species, has initiated re-evaluation of options.

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:

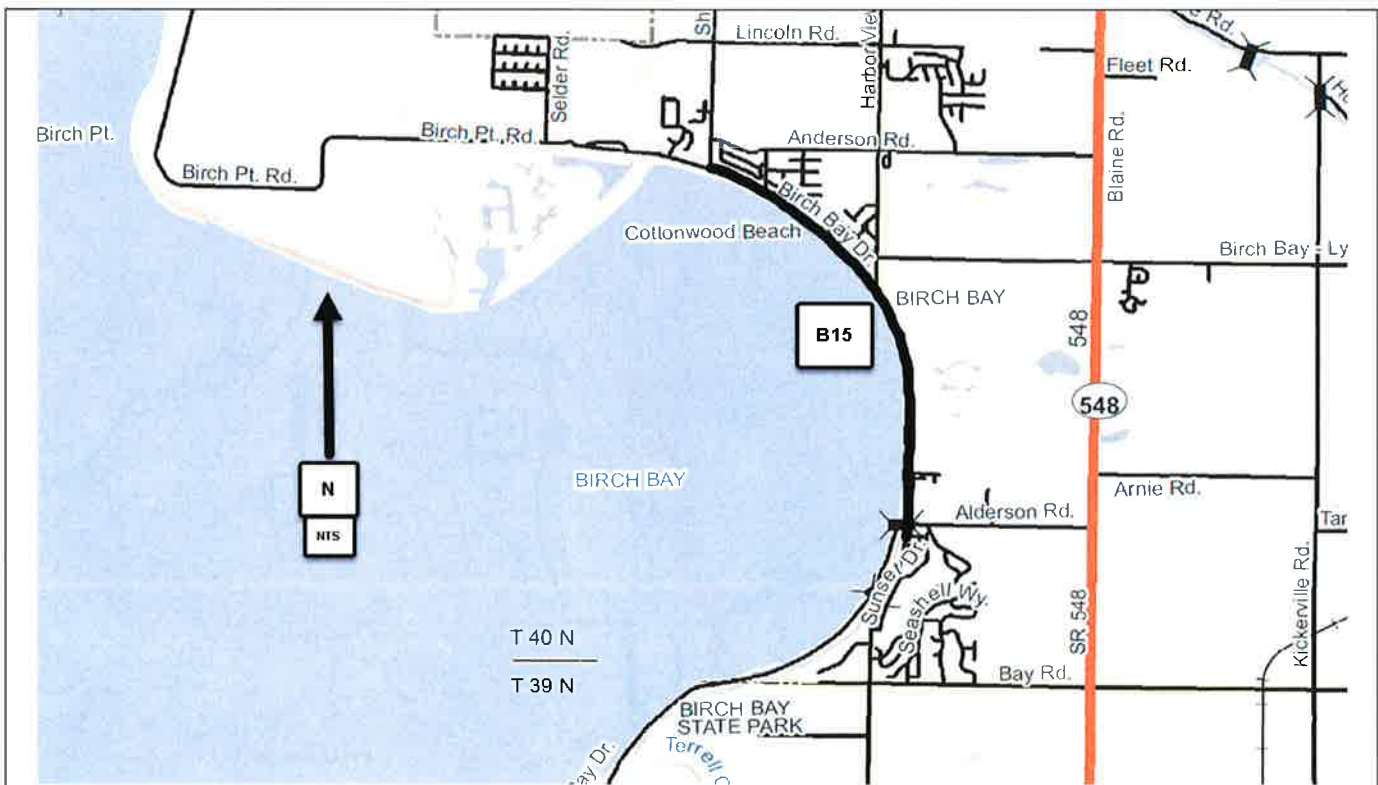
This project is located in Sections 24, 30, and 31 of T40N, R1E. The work involves pavement rehabilitation of approximately 2.5 miles of roadway through a grind/repave operation. This project is listed #R15 on the 2022-2027 Six-Year Transportation Improvement Program.

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

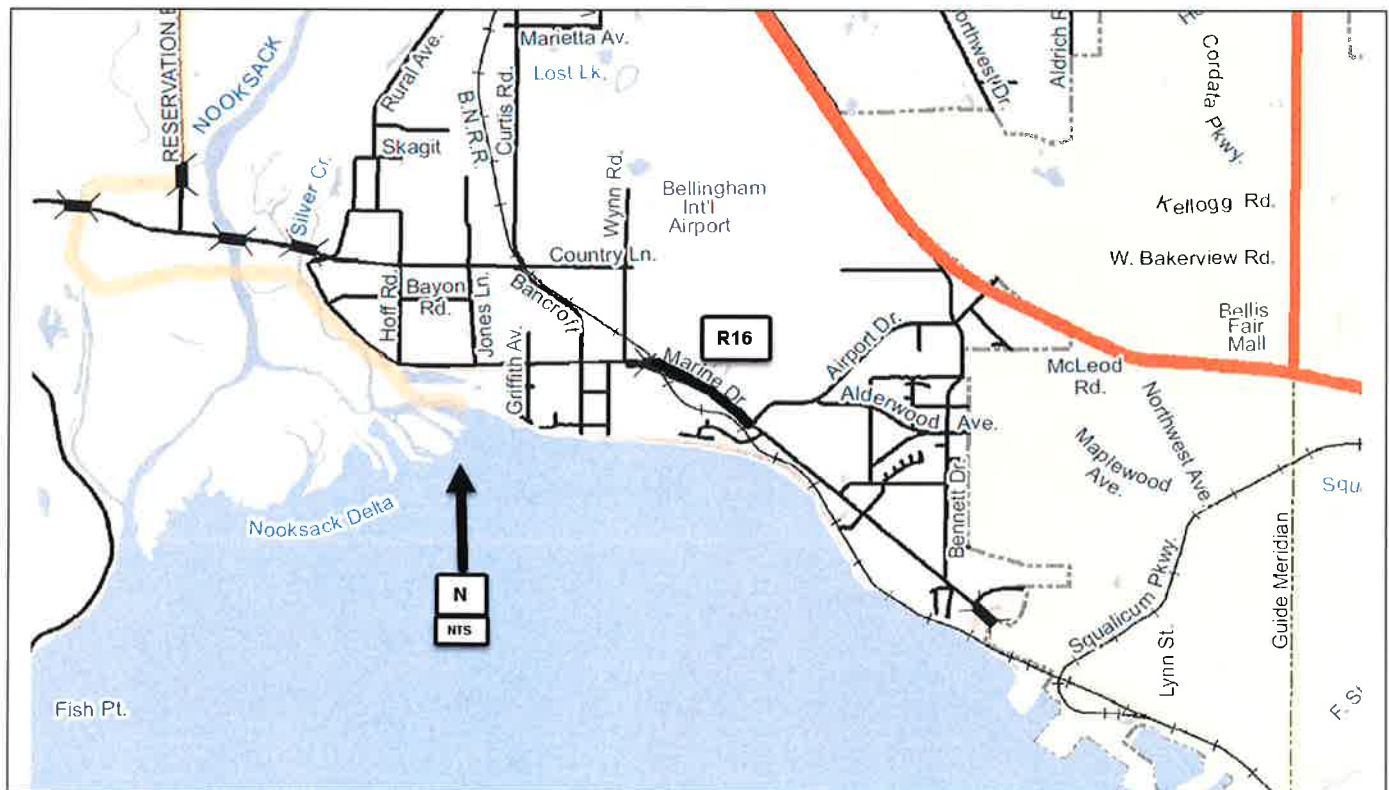
Total Estimated Project Cost: TBD

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.

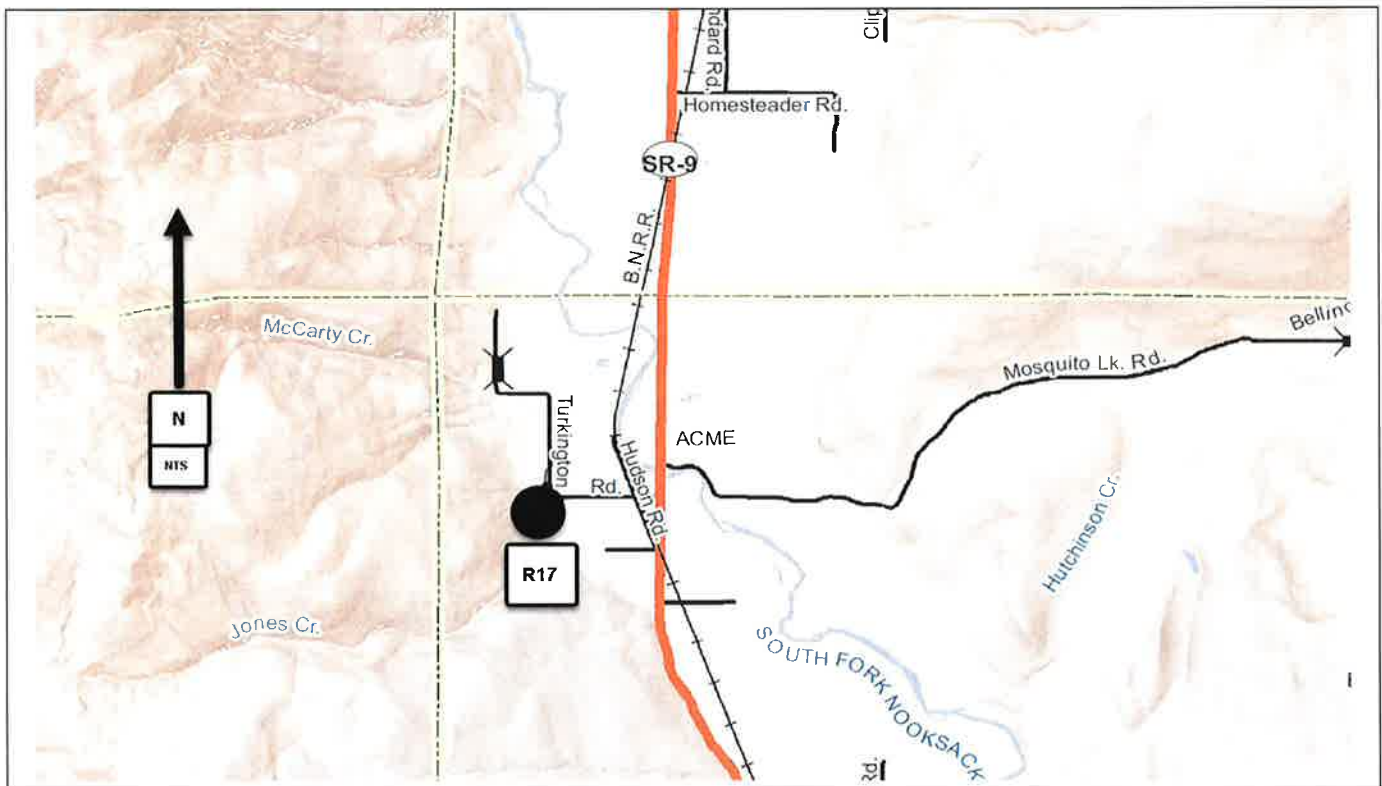
Total Estimated Project Cost: \$ 585,000

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

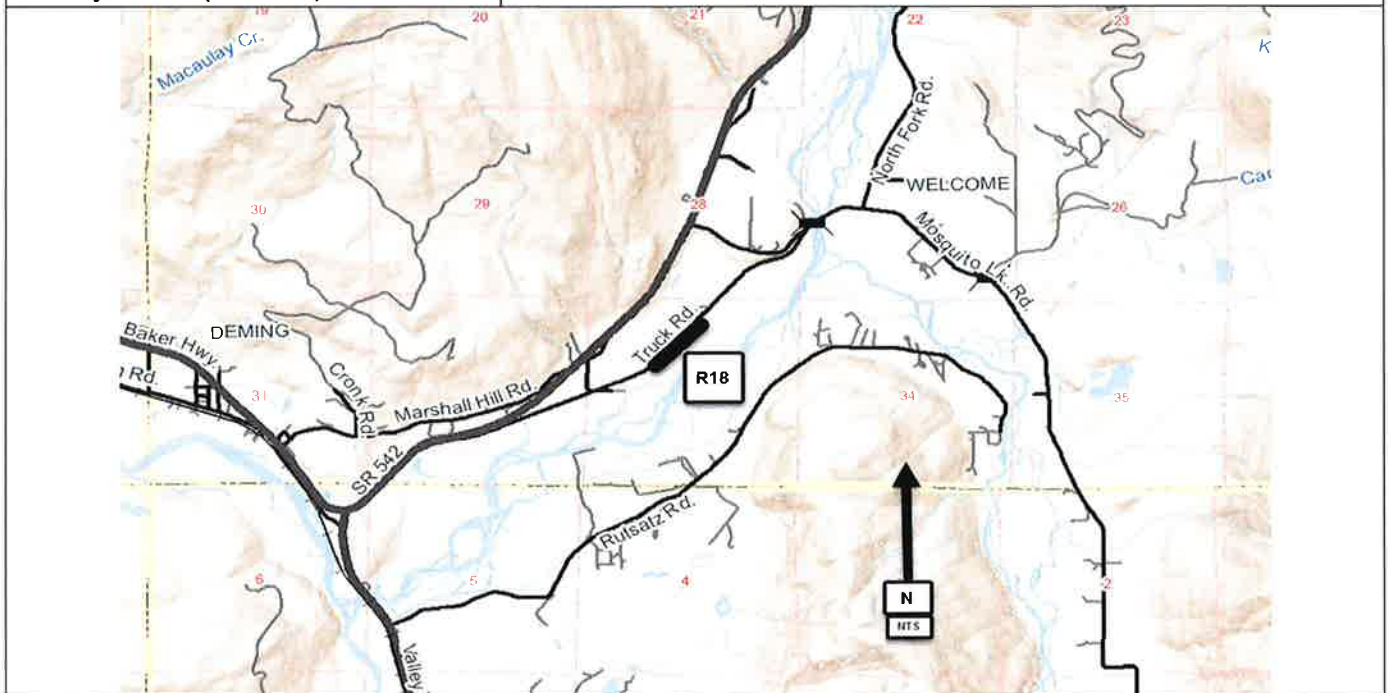
Project Narrative:

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.

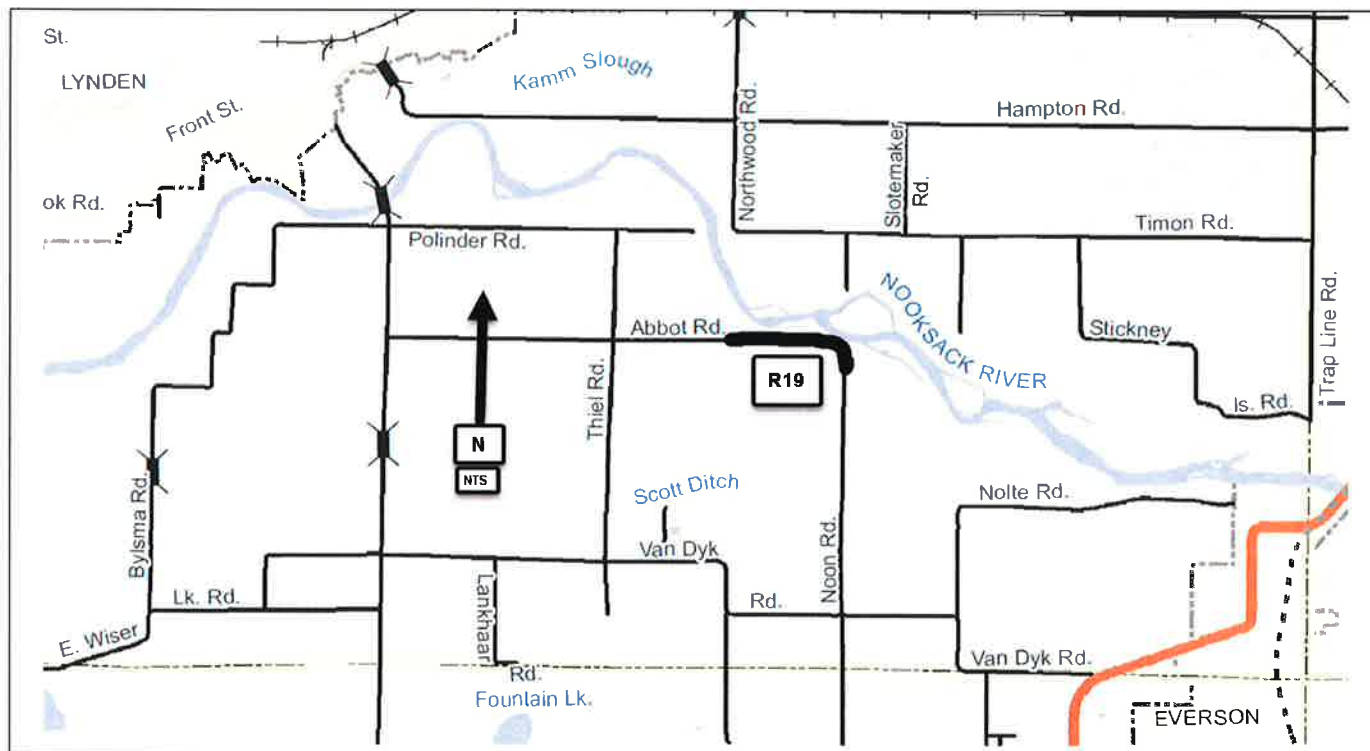
Total Estimated Project Cost: \$400,000

Expenditures to Date: \$0

Funding Sources:

Federal	\$
State	\$
Local	\$400,000 (2021-2022)

Environmental Permitting	HPA, ACOE, Shorelines, SEPA
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



Ferndale Road/Levee Improvements CRP # 919001

Construction Funding Year(s): TBD

Project Narrative:

This project is located in Sections 30 and 31, T39N, R2E. This project includes reconstruction of 1.2 miles of levee including the Ferndale Levee and Ferndale Treatment Plant Levee segments. The new levee will be set back slightly to Ferndale Road with the roadway serving as the crest of the levee. This project is listed #R20 on the 2022-2027 Six-Year Transportation Improvement Program.

Project Status: Due to the high cost, outside funding will be sought. The WCF CZD 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.

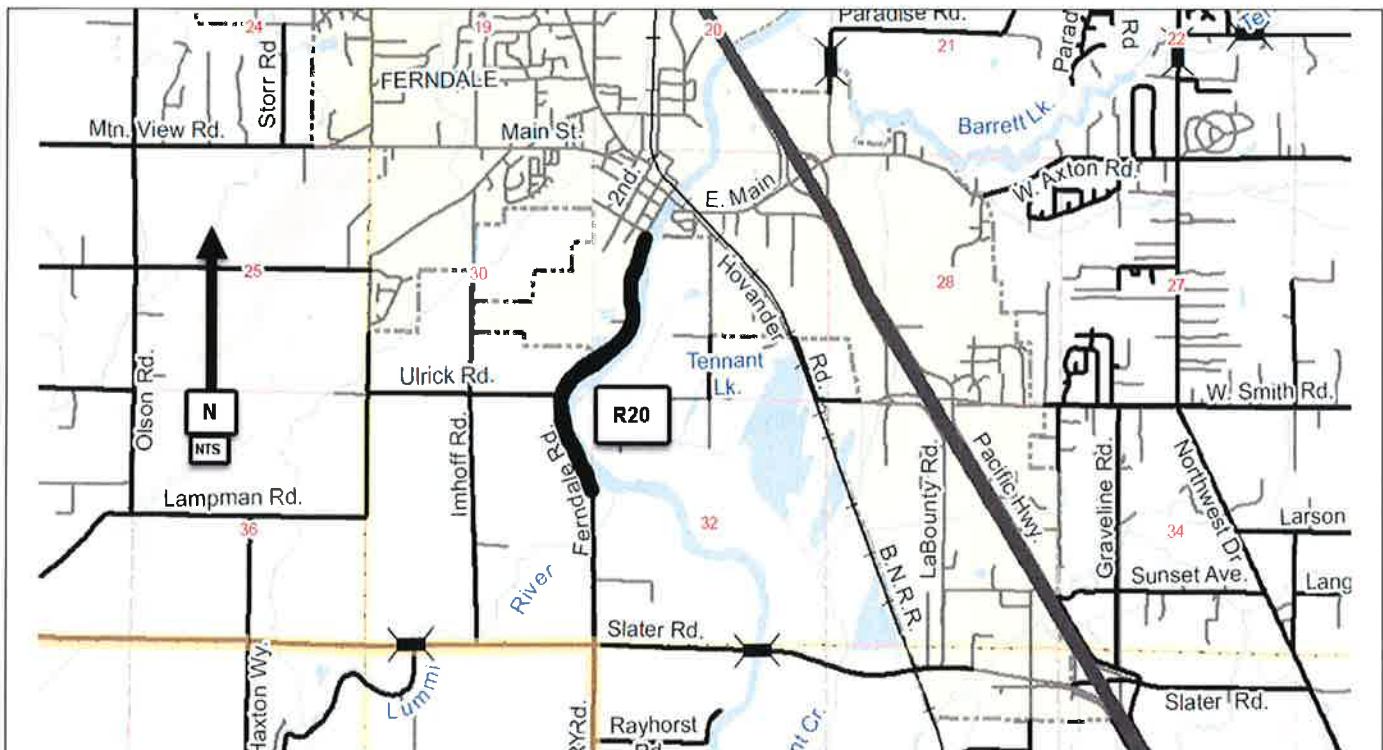
Total Estimated Project Cost: \$150,000

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

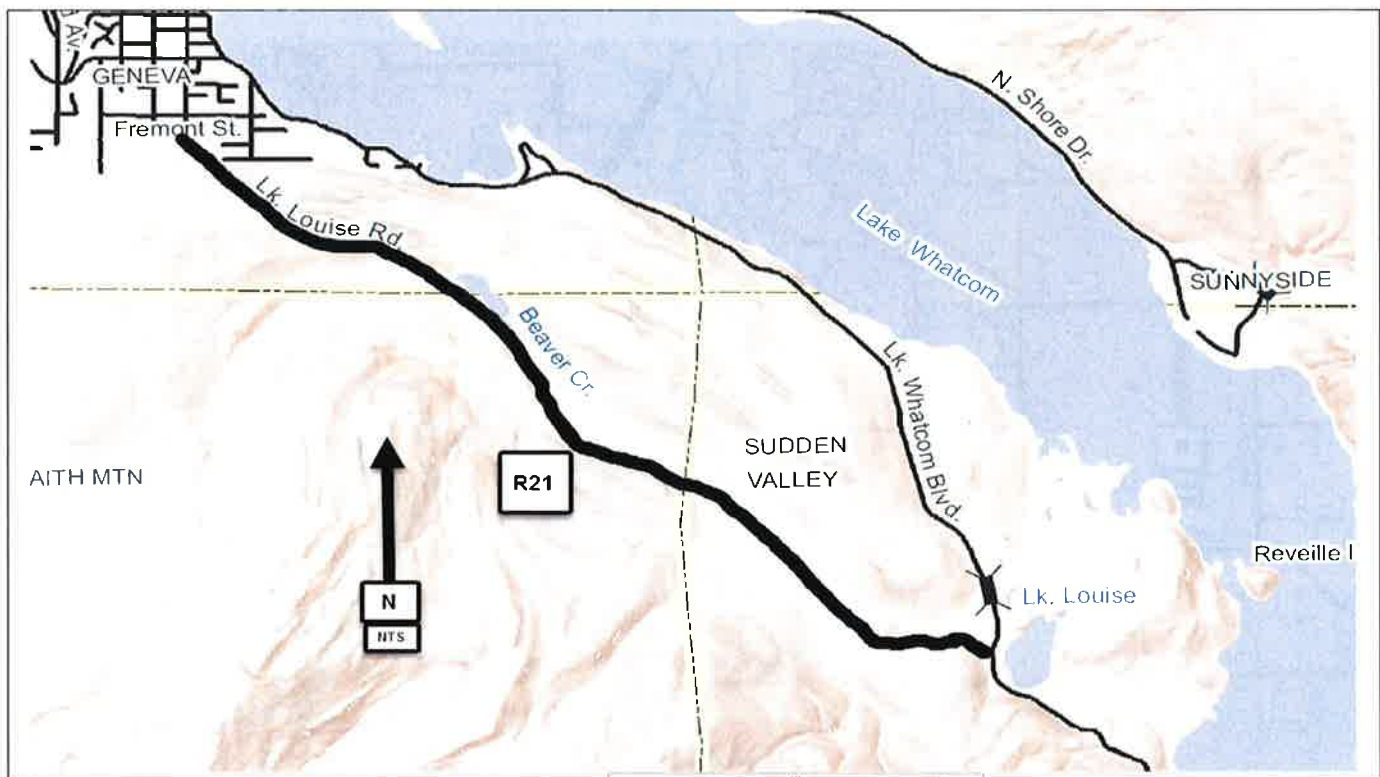
Project Narrative:

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 Expenditures to Date: \$ 0	Funding Sources:	
	Federal	\$ 0
	State	\$ 0
	Local	\$2,050,000

Environmental Permitting	SEPA,
Right-of-Way Acquisition (Estimate)	\$0
County Forces (Estimate)	TBD



Austin Street, Lake Louise to Cable Pavement Rehabilitation with ADA Improvements CRP #921005

Construction Funding Year(s): 2023

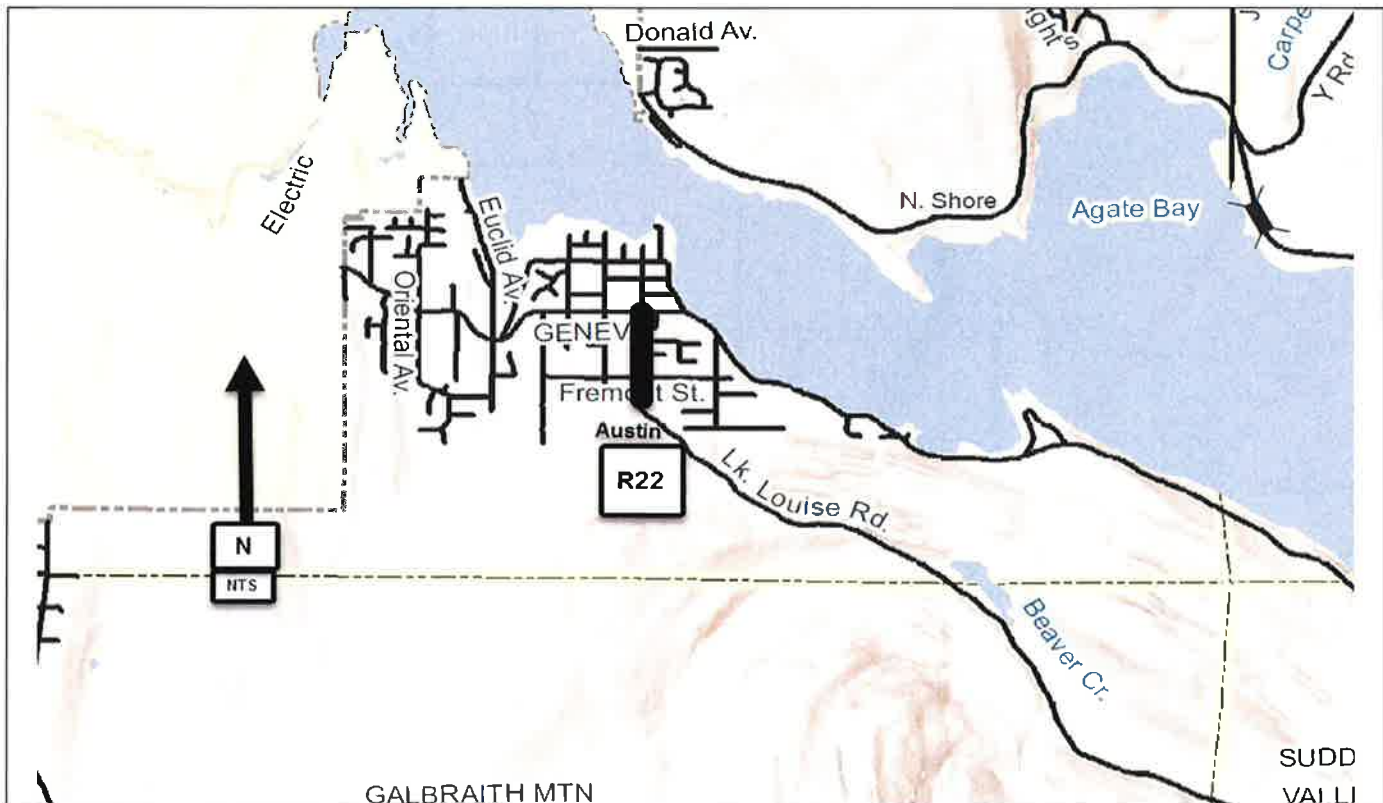
Project Narrative:

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 #922001**

Construction Funding Year(s):	TBD
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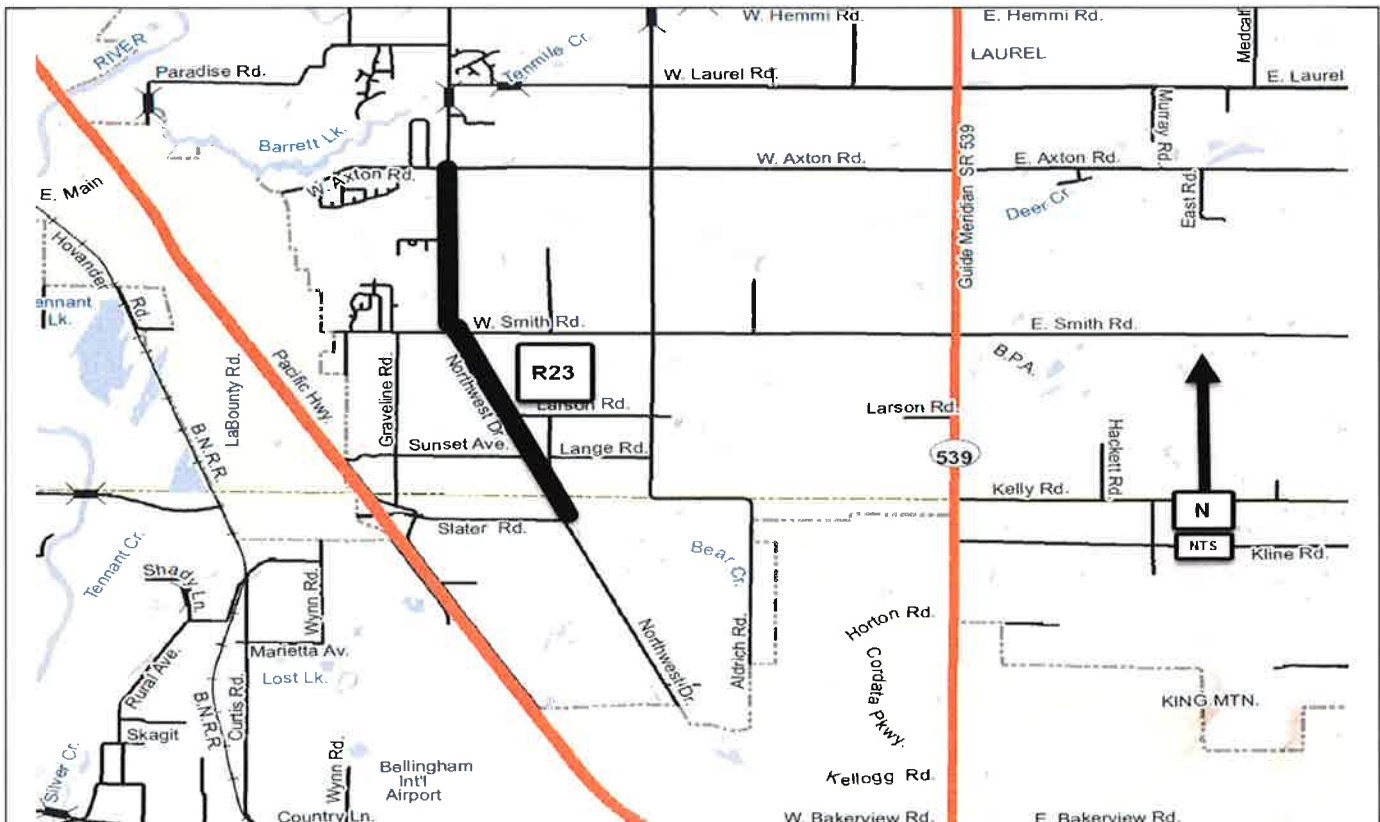
Project Narrative:

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



Hampton Road, City of Lynden to Van Buren Pavement Rehabilitation CRP #922002

Construction Funding Year(s): 2024

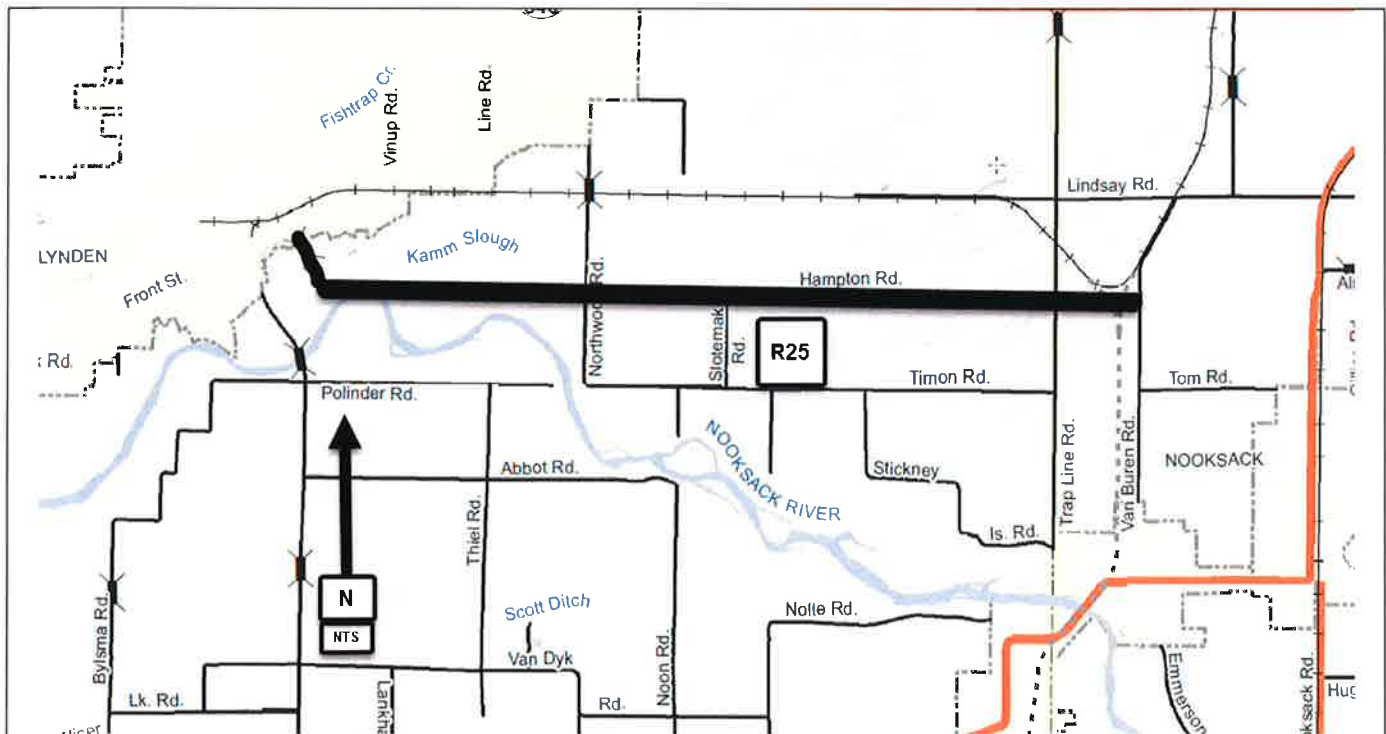
Project Narrative:

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



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

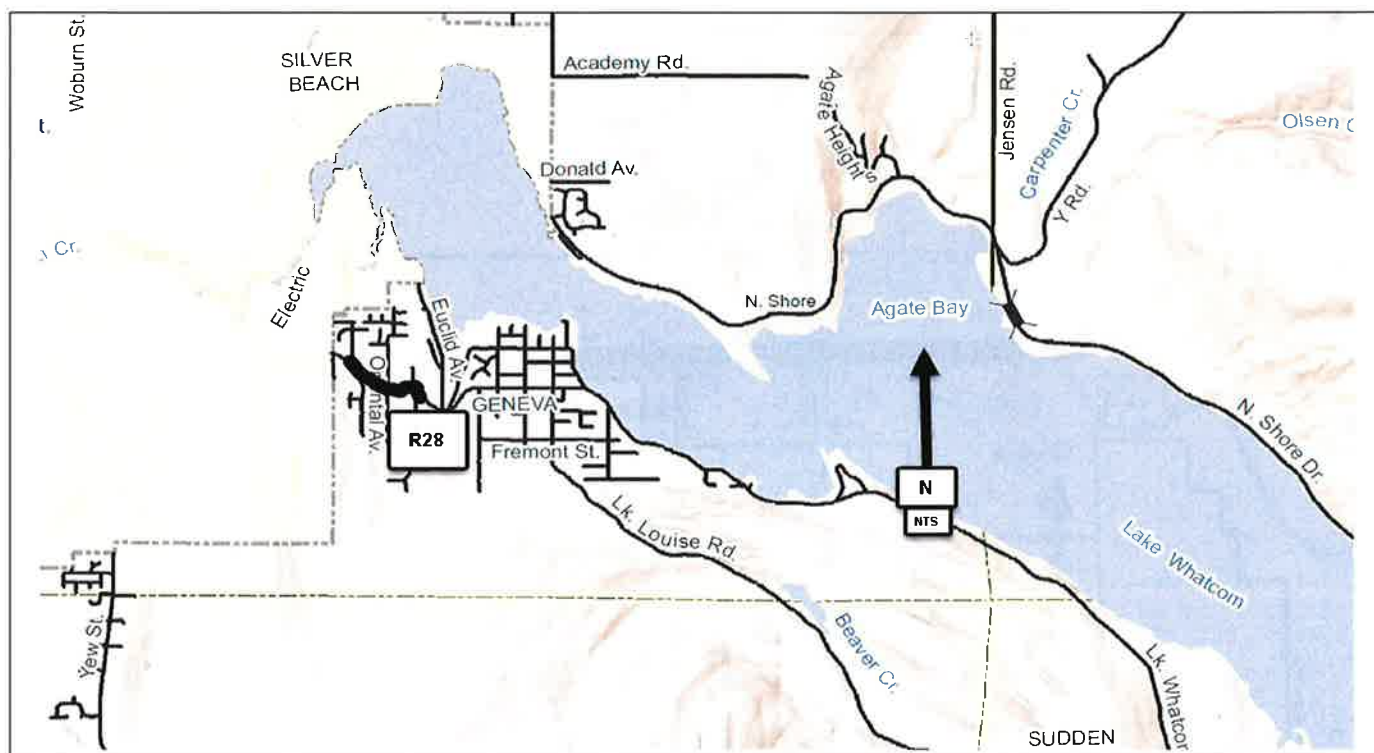
Funding Sources:

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

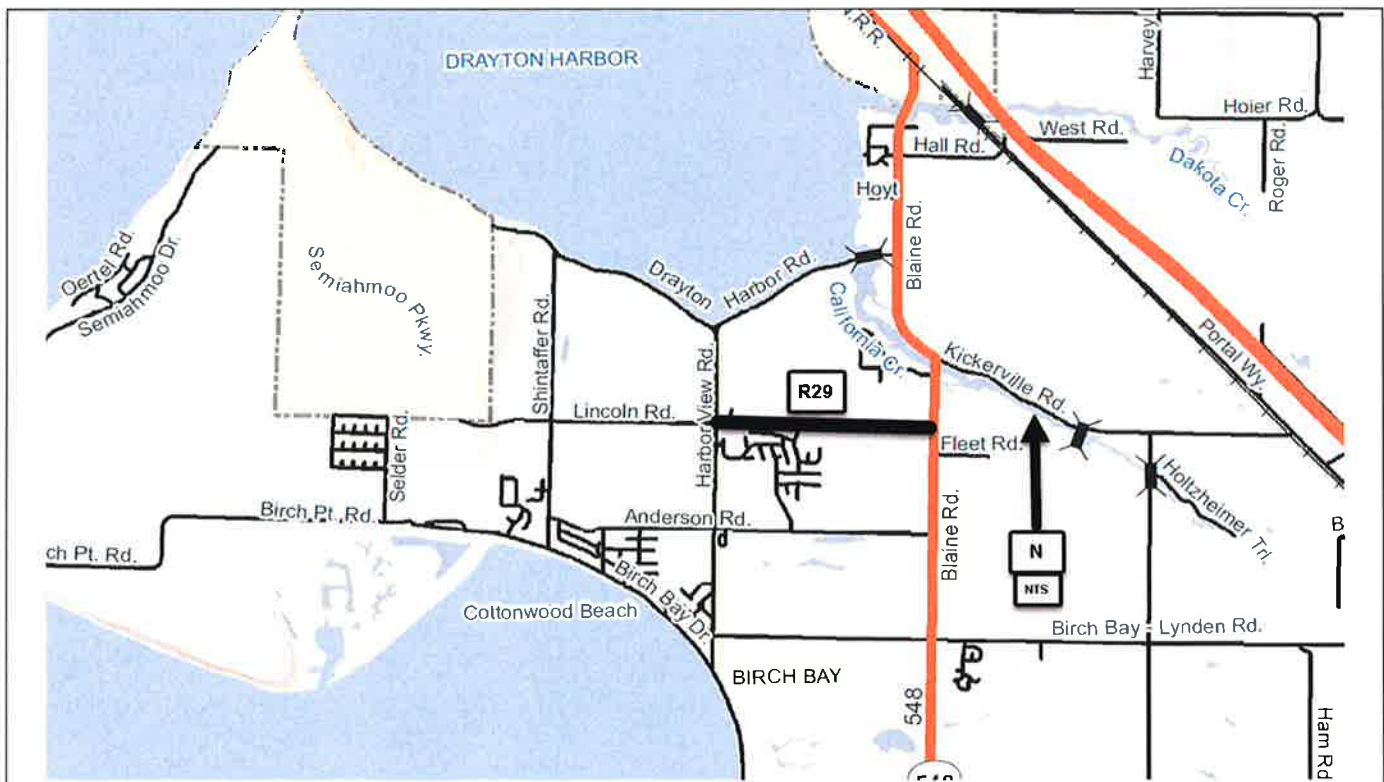
Funding Sources:

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



**Small Area Paving
Bridge Approach, Pavement Rehabilitation, Minor Widening
CRP #922003**

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.

**South Pass Road
2020 Flood Damage Repair
CRP #921007**

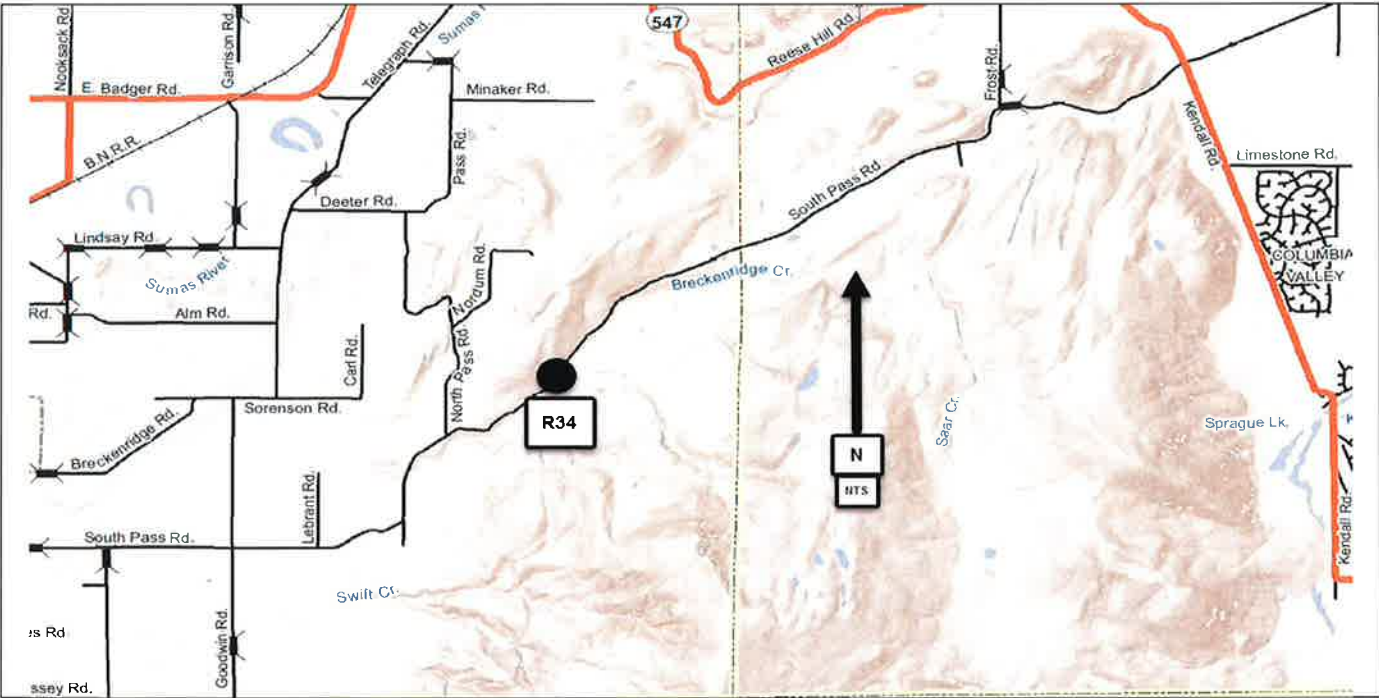
Construction Funding Year(s): 2023

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	Funding Sources:	
	Federal	\$380,000
	State	\$ 0
	Local	\$75,000
Expenditures to Date: \$ 0		

Environmental Permitting	
Right-of-Way Acquisition (Estimate)	
County Forces (Estimate)	



**Birch Bay Drive/Lora Lane
Culvert Replacement
CRP #922004**

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 #922005**

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

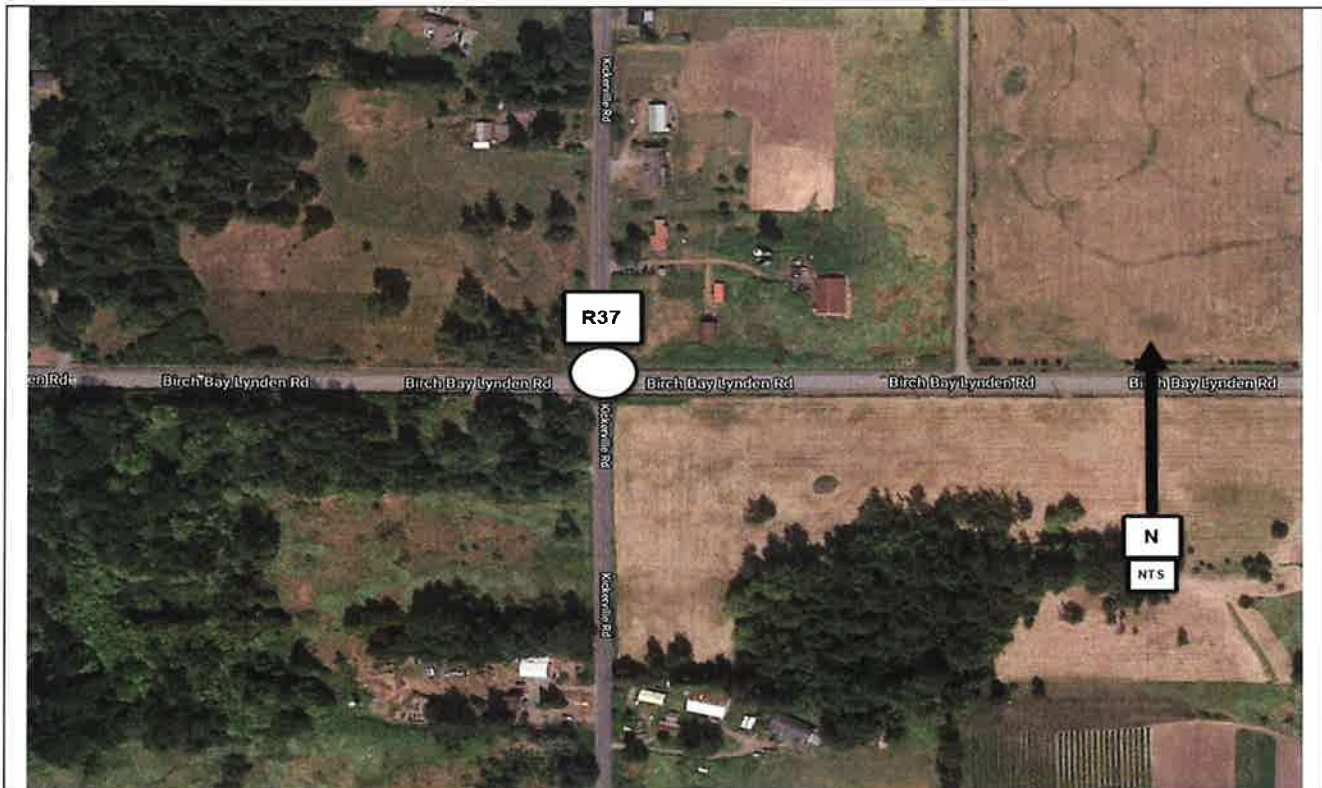
Funding Sources:

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 # 922006**

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

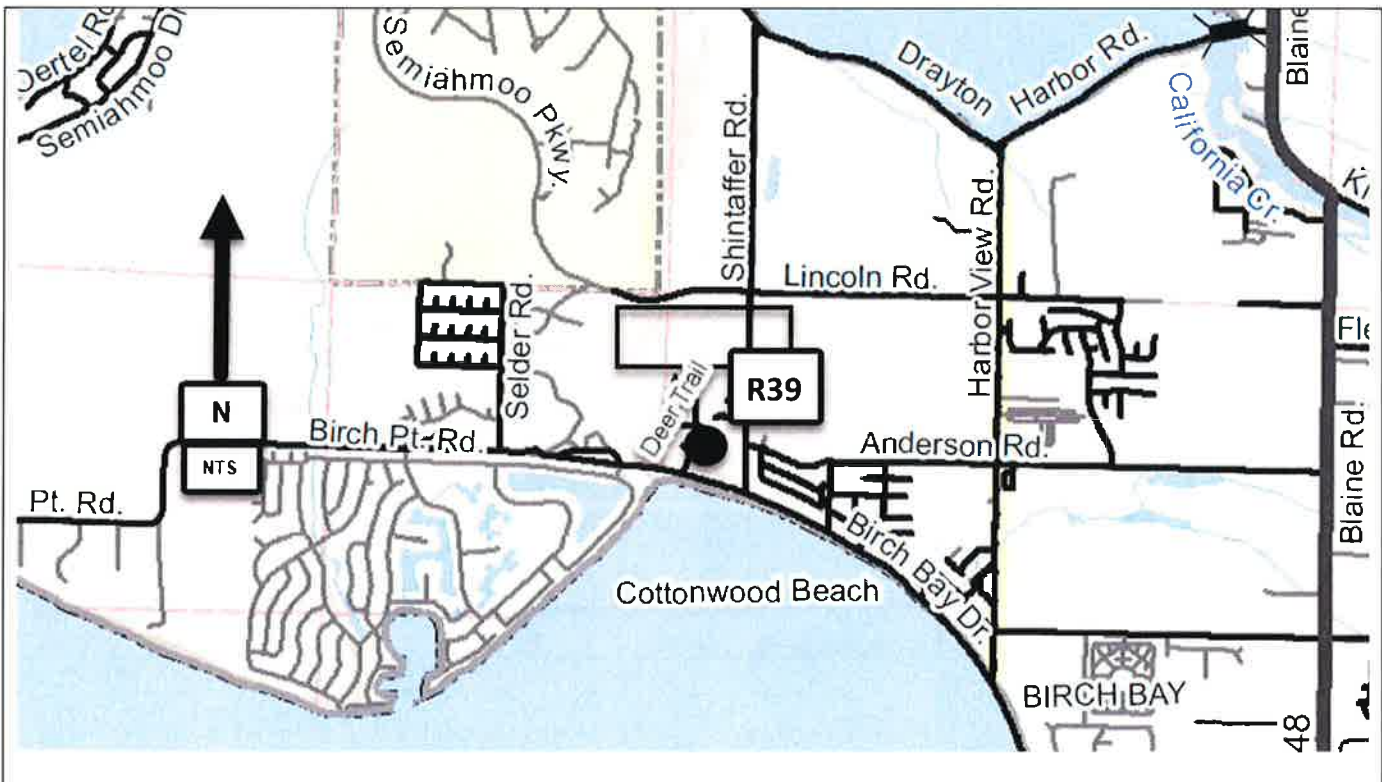
Project Narrative:

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



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

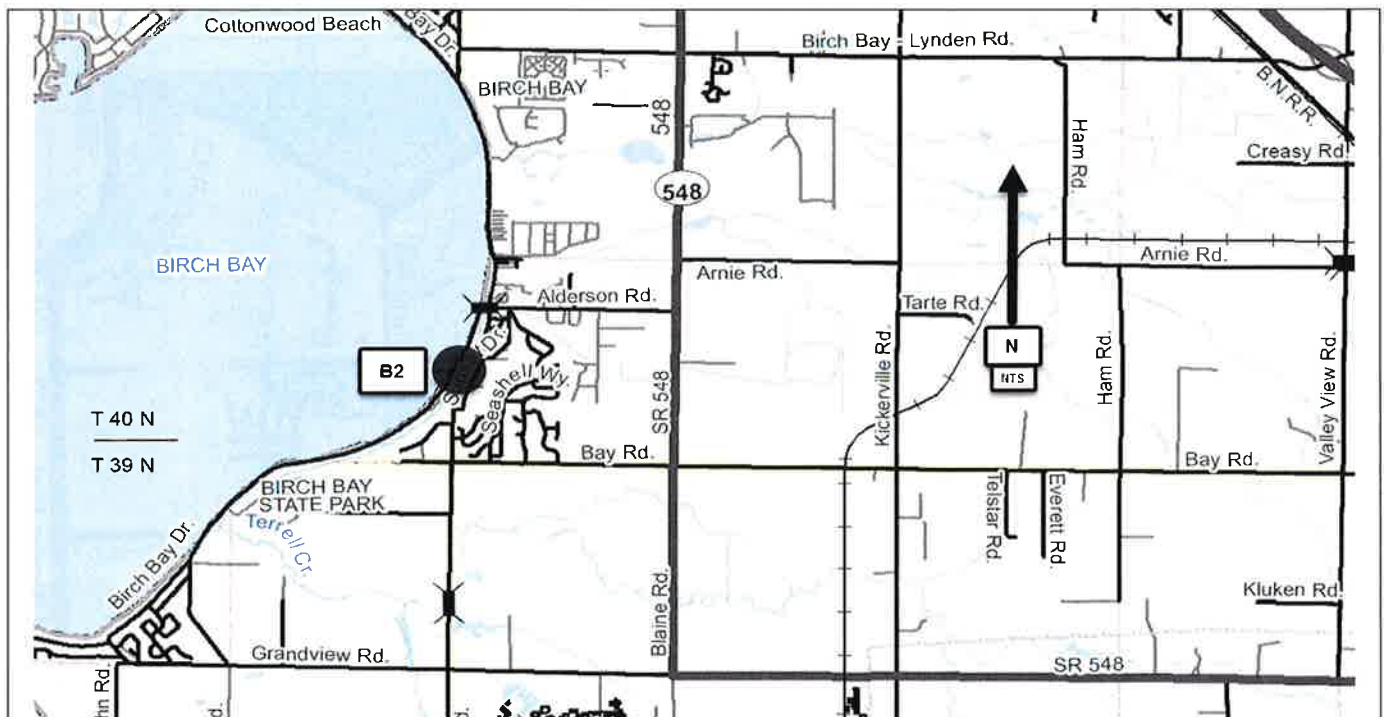
Funding Sources:

Federal	\$
State	\$
Local	\$450,000

Environmental Permitting TBD

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD



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.

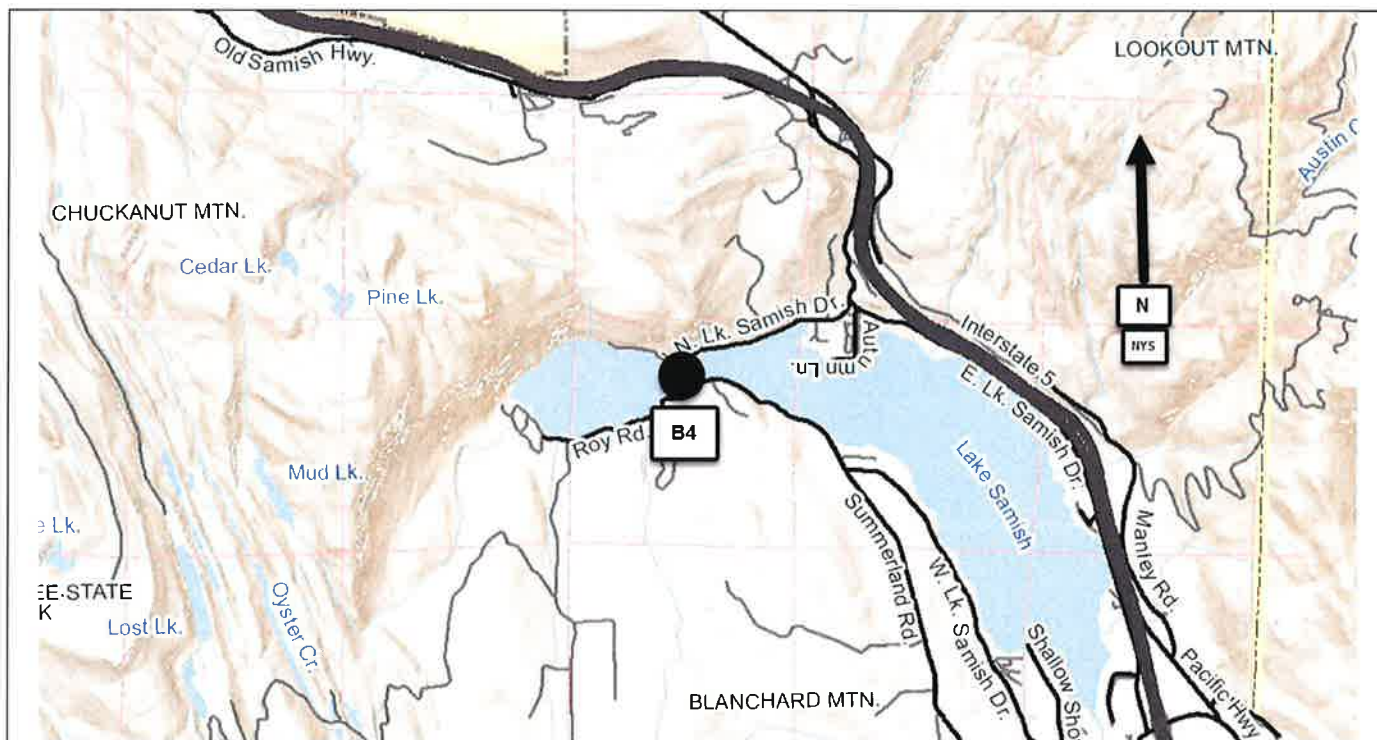
Total Estimated Project Cost: \$10,250,000

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

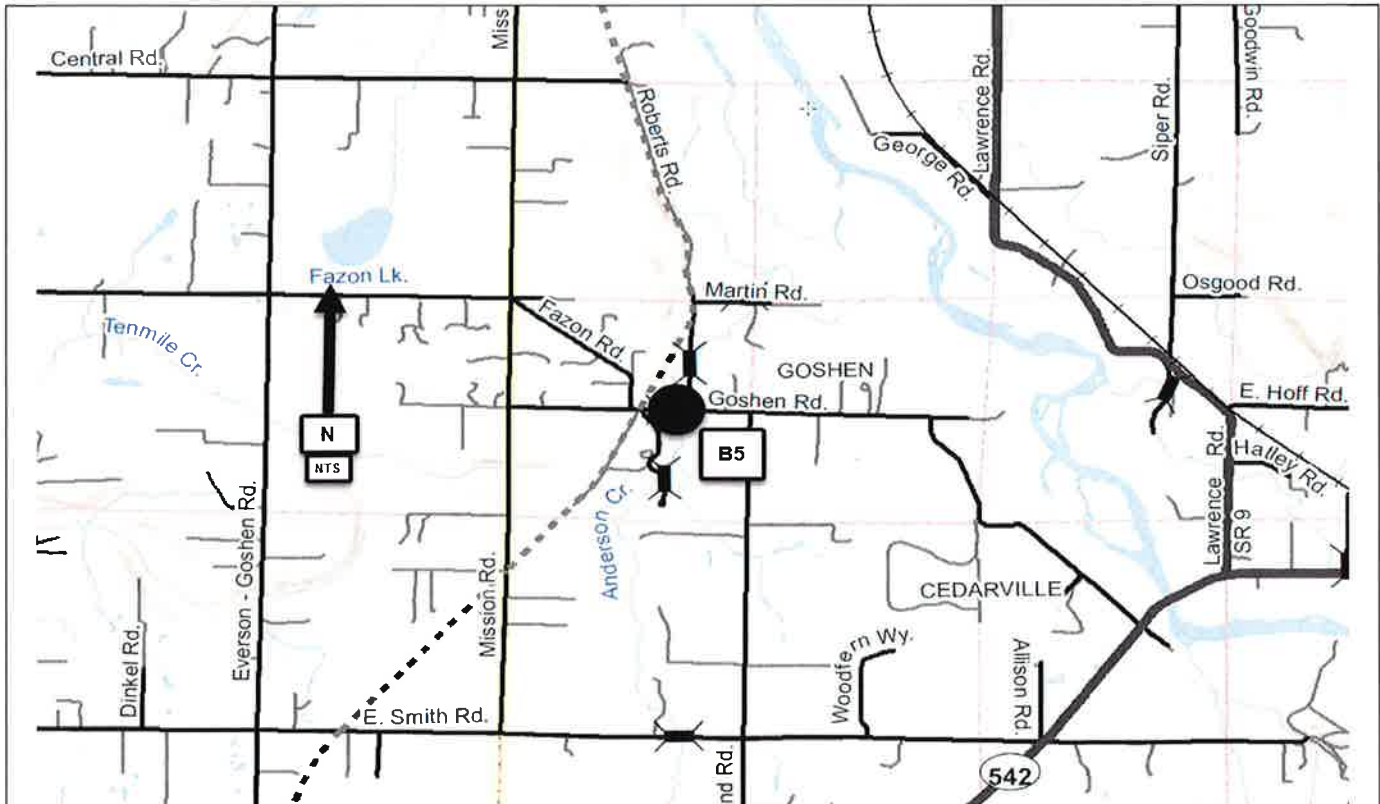
Project Narrative:

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
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	N/A



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.

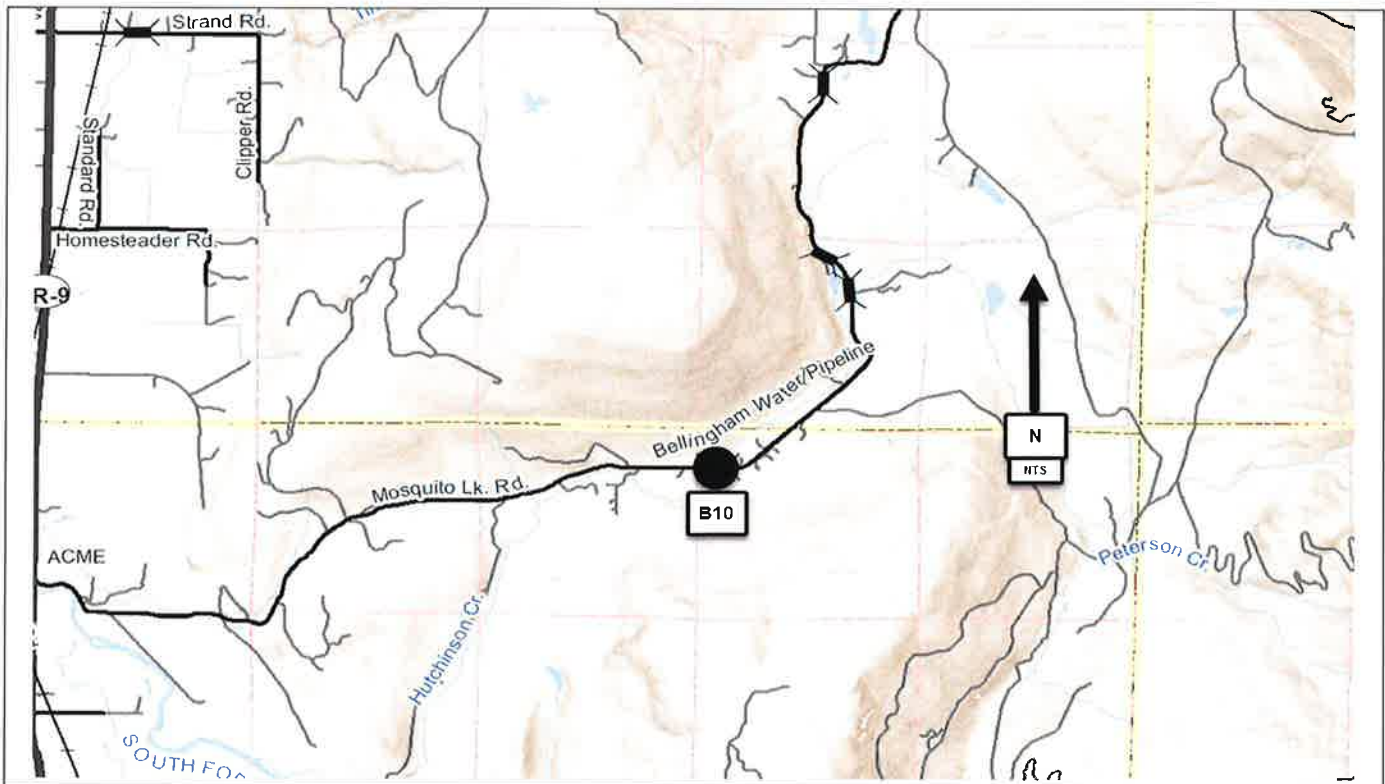
Total Estimated Project Cost: \$660,000

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

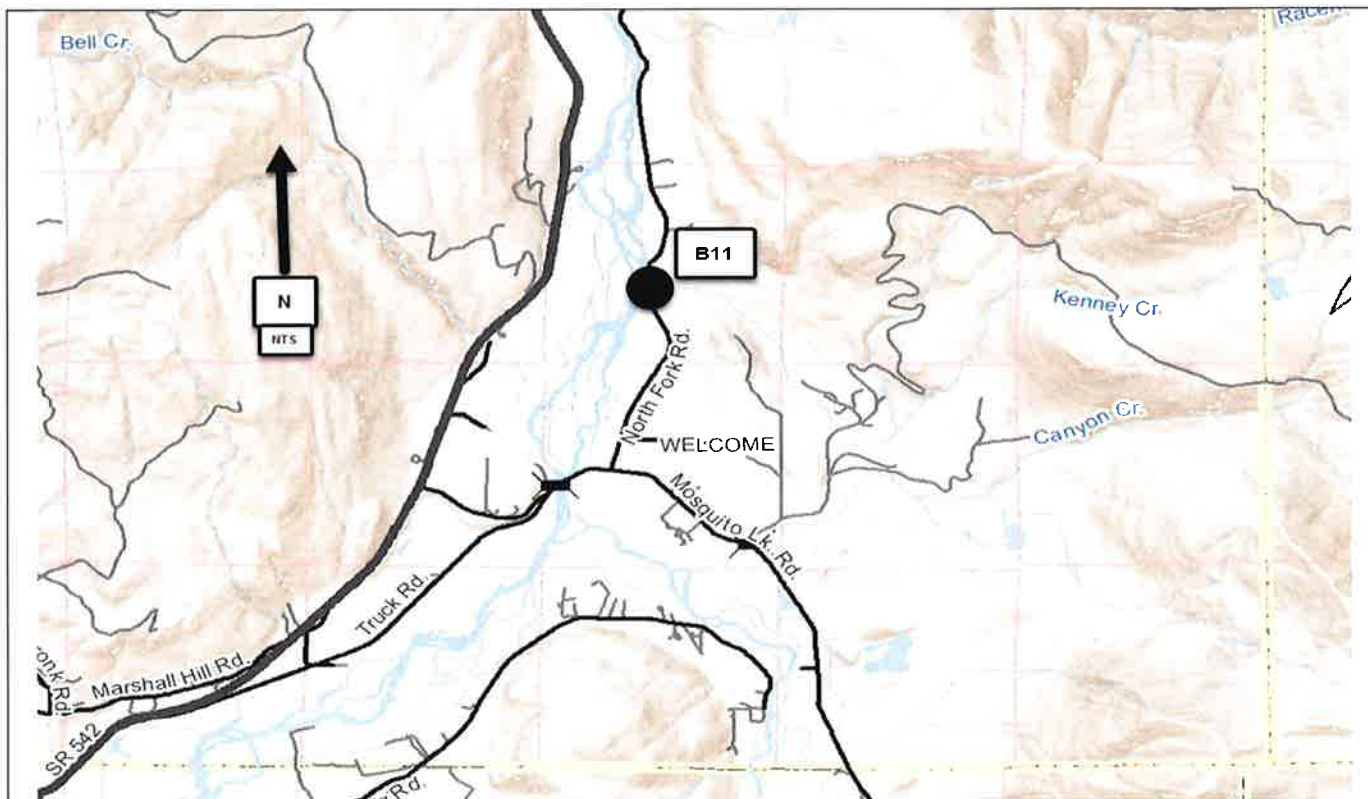
Construction Funding Year(s): 2023

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

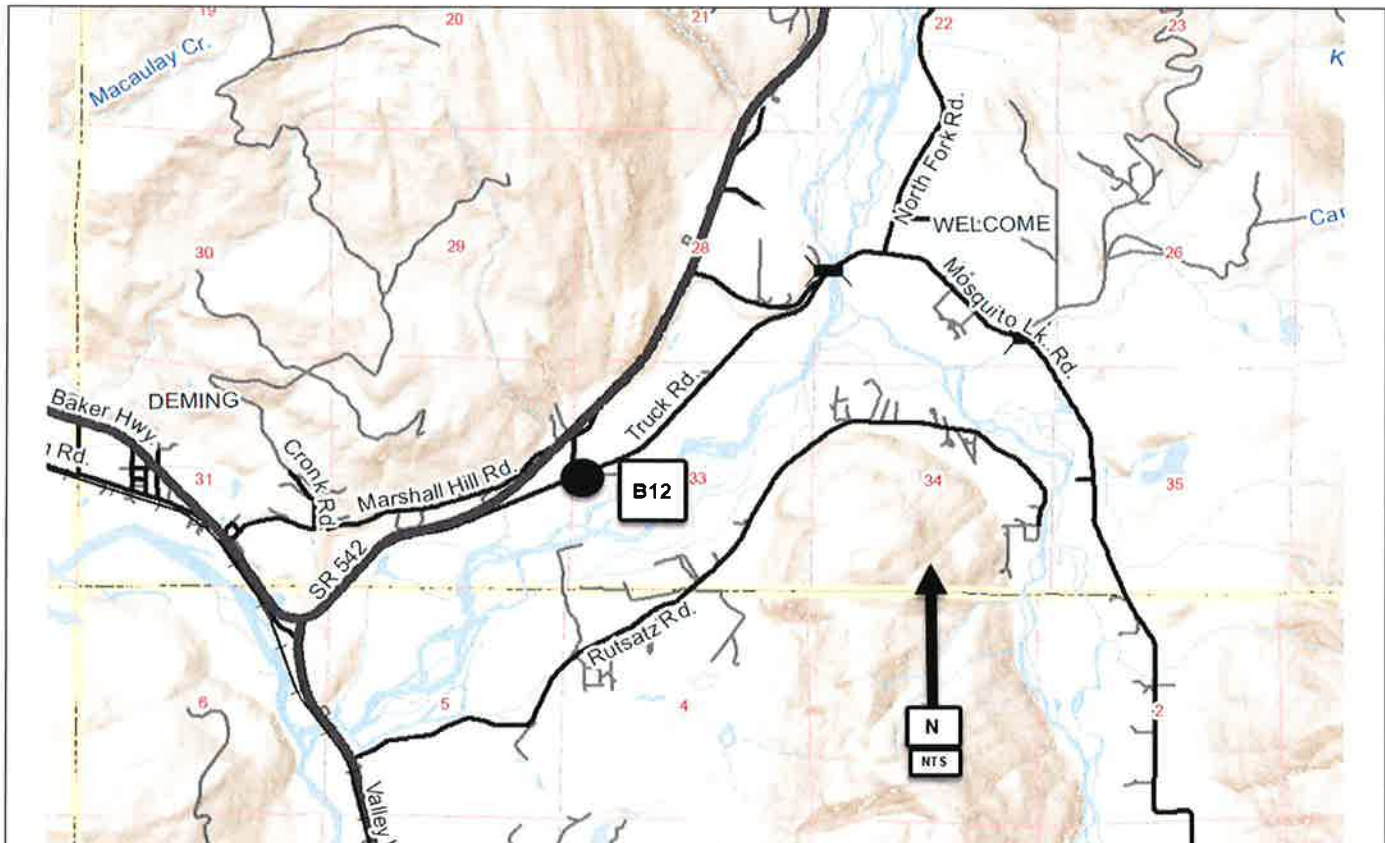
Construction Funding Year(s): TBD

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		Funding Sources:	
Expenditures to Date: \$ 10,000		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 # 922007Not 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
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD



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 brige 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

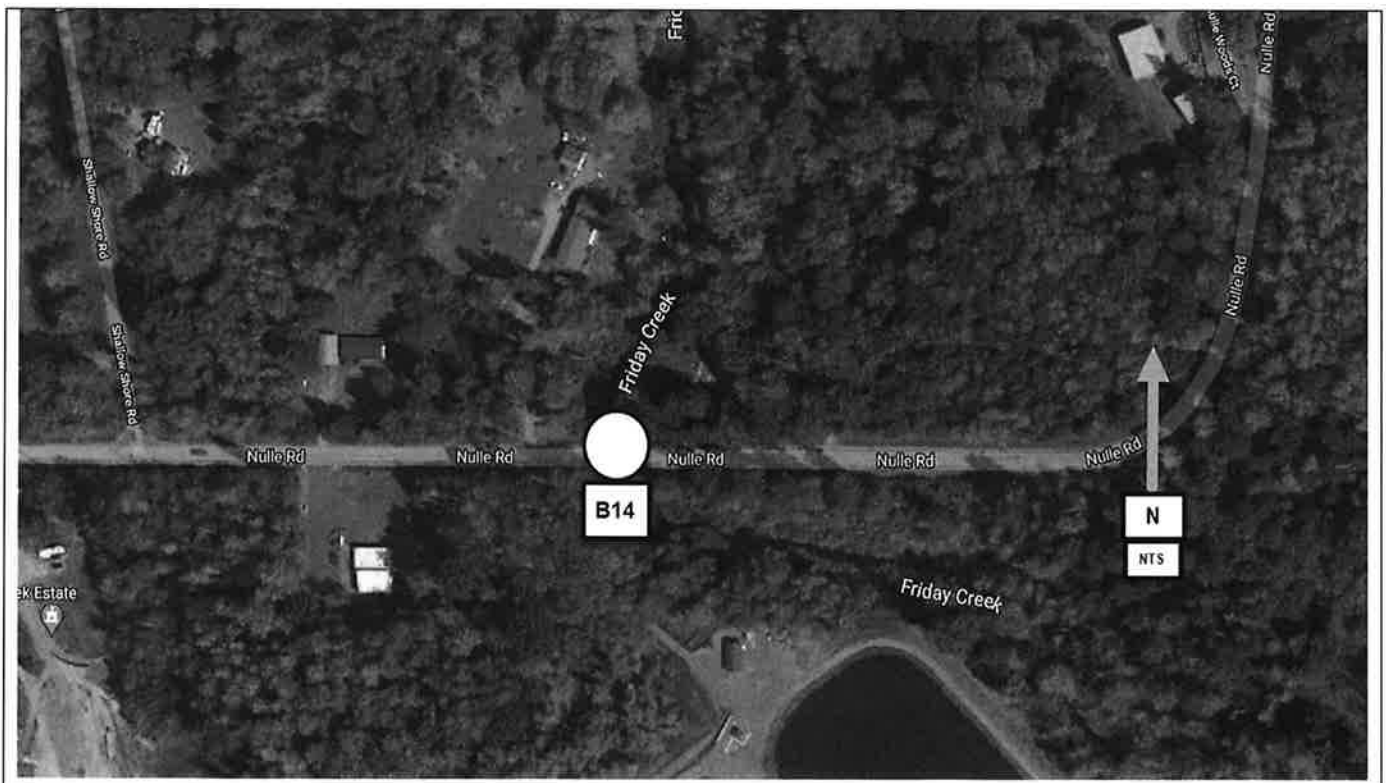
Funding Sources:

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	Funding Sources:	
	Federal	\$ 20,000,000
	State	\$ 2,000,000
	Local	\$ 12,000,000
Expenditures to Date: \$500,000		

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.

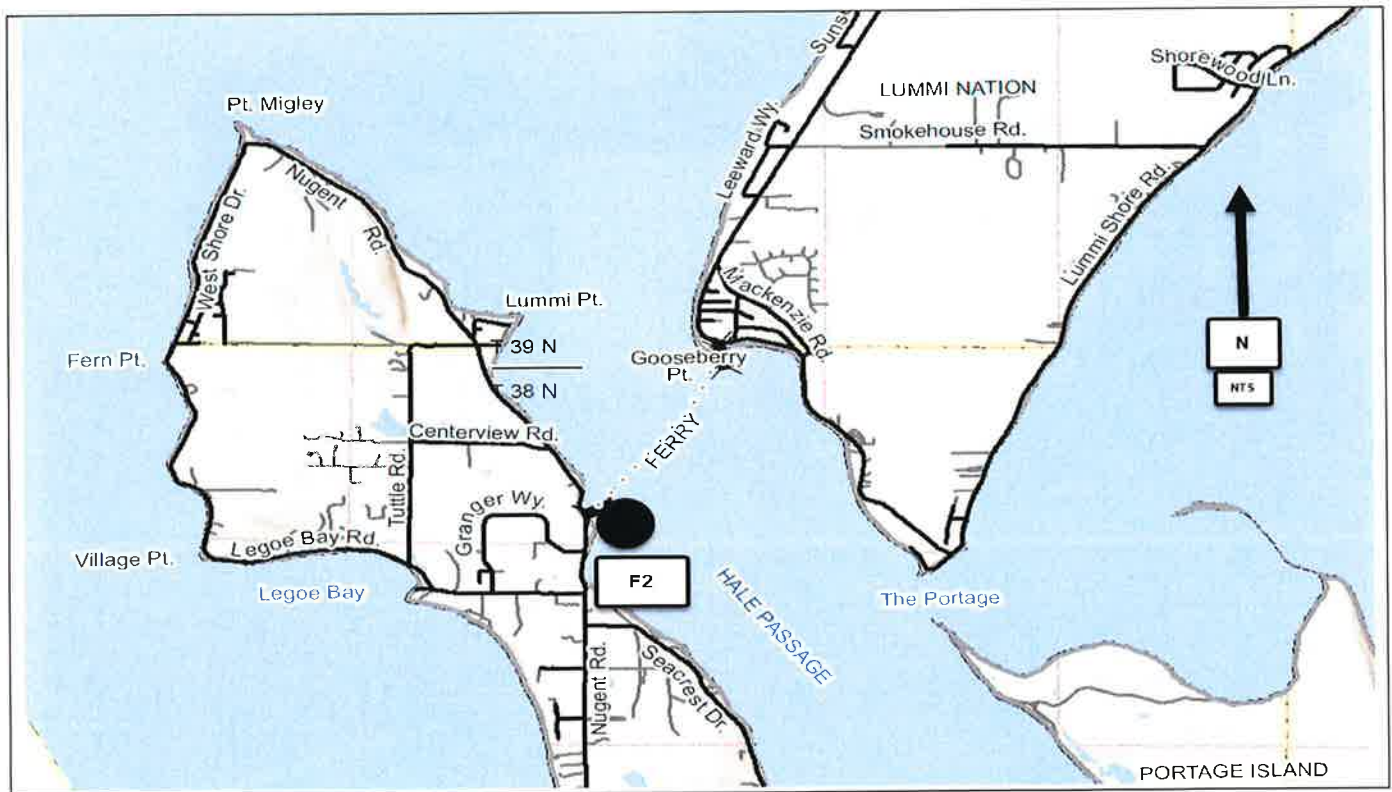
Total Estimated Project Cost: \$2,370,000

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	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$150,000
Expenditures to Date: \$ 0		

Environmental Permitting	None Required
Right-of-Way Acquisition (Estimate)	None Required
County Forces (Estimate)	None Required



**Various Bridges Rehabilitation / Replacement
CRP # 922008**

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

Right-of-Way Acquisition (Estimate) TBD

County Forces (Estimate) TBD

Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

Right of Way Acquisition
CRP # 922009

Construction Funding Year(s): 2022-2027

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.

Project Status:

N/A.

Total Estimated Project Cost: \$150,000

Expenditures to Date:

Funding Sources:

Federal	\$0
State	\$0
Local	\$150,000 (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 Site Improvements
CRP # 922010

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 # 922011

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
Right-of-Way Acquisition (Estimate)	TBD
County Forces (Estimate)	TBD

Due to the nature of this program item, no map exists. Council review and prioritization will be sought at the appropriate time.

Unanticipated Non-motorized Transportation Improvements CRP # 922012

Construction Funding Year(s): 2022 - 2027

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:

Funding Sources:

Federal	\$0
State	\$0
Local	\$160,000 (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.

Fish Passage Project
CRP # 922013

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	Funding Sources:	
	Federal	\$0
	State	\$0
	Local	\$300,000 (2022-2027)
Expenditures to Date: N/A		

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 # 922014

Construction Funding Year(s): TBD

Project Narrative:

This item addresses the various projects related to Sumas Mountain/Swift Creek Slide. Locations to be determined. This project is #Y7 on the 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:

Funding Sources:

Federal	\$0
State	\$0
Local	\$400,000 (2022-2027)

Environmental Permitting	N/A
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Right-of-Way Acquisition (Estimate)	N/A
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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.

Railroad Crossing Improvements CRP # 922015

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
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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.

Beam Guardrail Replacements/Upgrades
CRP # 922016

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, Cllrg/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 # 922017**

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.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2021-583

File ID:	AB2021-583	Version:	1	Status:	Agenda Ready
File Created:	09/29/2021	Entered by:	MCaldwel@co.whatcom.wa.us		
Department:	Finance Division	File Type:	Resolution (FCZDBS)		
Assigned to:	Council			Final Action:	
Agenda Date:	10/12/2021			Enactment #:	

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

TITLE FOR AGENDA ITEM:

Resolution amending the Flood Control Zone District & Subzones 2021 budget, request no. 4, in the amount of \$855,502 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #4 requests from the Birch Bay Watershed & Aquatic Resources Management (BBWARM) Fund:

1. To appropriate \$855,502 in Pubic Works - BBWARM to fund the Harborview Drive drainage project contract.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Proposed Resolution, Harborview Drive Request

PROPOSED BY: Public Works
INTRODUCTION DATE: 10/12/21

RESOLUTION NO. _____

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

AMENDMENT NO. 4 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
Birch Bay Watershed & Aquatic Resources Management Fund	<u>855,502</u>	<u>-</u>	<u>855,502</u>
Total Supplemental	<u>855,502</u>	<u>-</u>	<u>855,502</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

Stormwater

Suppl ID # 3499

Fund 16925

Cost Center 925901702

Originator: Randy Rydel

Expenditure Type: One-Time Year 1 2021 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Harborview Drive Continued 2020 Appropriation

X



9/27/21

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7380	Other Improvements	\$855,502
	Request Total		\$855,502

1a. Description of request:

The Harborview Drive Drainage project was originally budgeted and slated for 2020 construction. At the end of 2020 a contract for construction of \$855,502 was signed utilizing existing 2020 budget authority, but the project was delayed due to work on our Birch Bay Berm project. This construction contract was eligible for continuation based on Whatcom County Code 3.02.050 Continuing Appropriations, but through an administrative oversight was not requested through the Continuing Appropriations process.

At this time Public Works is asking for budget authority to continue moving forward with this contract. The related contract is already funded with \$200k of REET II funds. BBWARM fund balance is planned to cover remaining net contract cost of \$656K.

1b. Primary customers:

Citizens and visitors to Birch Bay

2. Problem to be solved:

Resolving on-going flooding and drainage problems along Birch Bay Drive.

3a. Options / Advantages:

N/A - project already approved

3b. Cost savings:

N/A - project already approved

4a. Outcomes:

Improved drainage and reduced flooding, Project will be completed late Fall of 2021.

4b. Measures:

Reduced flooding will be the result of this project being installed.

5a. Other Departments/Agencies:

Public Works Maintenance and Operations Division as well as Stormwater Division will monitor and provide maintenance to this project upon its' completion.

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

Jordan Loftdahl of Public Works Maintenance and Operations will be responsible to implement any needed maintenance on this project.

6. Funding Source:

\$200k REET II Funding has already been committed and received. The remainder will come from the existing BBWARM Fund Balance

