

**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 26, 2021**

**INCLUDES INFORMATION  
FOR THE FOLLOWING MEETINGS:**

**9:45 A.M. – NATURAL RESOURCES COMMITTEE  
(ADJOURNS BY 10:10 A.M.)**

**10:15 A.M. - FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE  
(ADJOURNS BY NOON)**

**1 P.M. - PUBLIC WORKS AND HEALTH COMMITTEE  
(ADJOURNS BY 1:30 P.M.)**

**1:35 P.M. – PLANNING AND DEVELOPMENT COMMITTEE  
(ADJOURNS BY 2:20 P.M.)**

**2:25 P.M. – COMMITTEE OF THE WHOLE  
(ADJOURNS BY 4:45 P.M.)**

**6 P.M. - COUNCIL**

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**PARTICIPATE IN VIRTUAL COUNCIL MEETINGS**

**THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY**

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

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

# **COMMITTEE AGENDAS**

## **COUNCIL NATURAL RESOURCES COMMITTEE**

**9:45 A.M. TUESDAY, October 26, 2021 (ADJOURNS BY 10:10 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. AB2021-596 Report from the Parks and Recreation  
Department  
**Page 9**

### **Items Added by Revision**

### **Other Business**

### **Adjournment**

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## **COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE**

**10:15 A.M. TUESDAY, October 26, 2021 (ADJOURNS BY NOON)**

**Virtual Meeting**

### **Call To Order**

### **Roll Call**

### **Announcements**

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

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

1. AB2021-447 Resolution updating the Appendix of the 2015 Comprehensive Economic Development Strategy (CEDs) List  
**Pages 10 - 121**
2. AB2021-582 Ordinance amending the 2021 Whatcom County Budget, request no. 16, in the amount of \$411,953  
**Pages 122 - 128**
3. 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 129 - 131**

4. AB2021-593 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County to provide COVID-related isolation and quarantine to Island County residents, in the amount of \$200 per resident, per day  
**Pages 132 - 141**
5. AB2021-595 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to administer the Housing and Essential Needs Program in the amount of \$503,370 for a total amended contract amount of \$2,540,694  
**Pages 142 - 151**
6. AB2021-600 Request authorization for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and Geneva Consulting Services for the coordination of the Whatcom Lead Integrating Organization (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)  
**Pages 152 - 170**
7. AB2021-602 Request authorization for the County Executive to enter into an agreement between Whatcom County and Greg Dibble for the lease of 600 Dupont Street, Bellingham WA  
**Pages 171 - 206**

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

1. AB2021-585 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Drug Enforcement Administration for Cooperative State and Local Task Force Agreement FY2022  
**Pages 207 - 212**
2. AB2021-586 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Drug Enforcement Administration for Program-Funded State and Local Task Force Agreement FY2022, in the amount of \$38,744.00  
**Pages 213 - 220**
3. AB2021-588 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and San Juan County for Whatcom County Veteran Service Officer support services to San Juan County resident veterans, in an amount not to exceed \$10,000  
**Pages 221 - 226**
4. AB2021-604 Request authorization for the County Executive to enter into a contract between Whatcom County and National Service Office for Nurse-Family Partnership to provide technical support and training, in the estimated amount of \$42,444  
**Pages 227 - 257**

#### **Items Added by Revision**

#### **Other Business**

#### **Adjournment**

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**COUNCIL PUBLIC WORKS AND HEALTH COMMITTEE**  
**1:00 P.M. TUESDAY, October 26, 2021 (ADJOURNS BY 1:30 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.

**Committee Discussion and Recommendation to Council**

1. AB2021-598 Discussion and request for motion regarding community requested revision to the Birch Bay Golf Cart Zone boundary  
**Pages 258 - 261**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL PLANNING AND DEVELOPMENT COMMITTEE**  
**1:35 P.M. TUESDAY, October 26, 2021 (ADJOURNS BY 2:20 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. AB2021-590 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 262 - 266**

**UPDATE FROM PLANNING AND DEVELOPMENT SERVICES ON THE STATUS OF PROPOSED REVISED REGULATIONS**

2. AB2021-605 Discussion on proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options  
**Pages 267 - 289**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL COMMITTEE OF THE WHOLE**  
**2:25 P.M. TUESDAY, October 26, 2021 (ADJOURNS BY 4:45 P.M)**  
**Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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

**Special Presentation**

1. AB2021-608 LEAD and GRACE Annual Community Impact Report  
**Pages 290 - 314**

**Committee Discussion**

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)  
**Pages 315 - 316**
2. AB2021-395 Discussion and periodic update of the Shoreline Management Program  
**Pages 317 - 461**
3. AB2021-209 Resolution regarding permanent affordability of childcare in Whatcom County  
**Pages 462 - 465**  
  
**DISCUSSION OF OCTOBER 19, 2021, LETTER FROM THE TASK FORCE – NO ACTIONS ON THE RESOLUTION IS EXPECTED TODAY**
4. AB2021-610 Discussion with County Executive on options for aid to Point Roberts  
**Pages 466 - 468**
5. AB2021-482 Presentation and discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities  
**Pages 469 - 474**

**Committee Discussion and Recommendation to Council**

1. AB2021-611 Discussion and possible motion to recommend rescinding a previous action of the Council that established a no shooting zone in Drayton Harbor  
**Pages 475 - 482**

**Items Added by Revision**

**Other Business**

**Adjournment**

# **COUNTY COUNCIL**

## **REGULAR COUNCIL MEETING**

**6:00 P.M. TUESDAY, October 26, 2021**

**Virtual Meeting**

## **CALL TO ORDER**

## **ROLL CALL**

## **FLAG SALUTE**

## **ANNOUNCEMENTS**

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

Individuals who require special assistance to participate in the Council's 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](http://www.co.whatcom.wa.us), or call the County Council Office or County Executive's Office.

## **COUNTY EXECUTIVE'S REPORT**

## **MINUTES CONSENT**

1. MIN2021-079 Committee of the Whole for October 12, 2021  
**Pages 483 - 489**
2. MIN2021-080 Regular County Council for October 12, 2021  
**Pages 490 - 508**
3. MIN2021-081 Special Committee of the Whole Executive Session for October 19, 2021  
**Pages 509 - 512**

## **PUBLIC HEARINGS**

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

1. AB2021-572 Ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions  
**Pages 513 - 526**
2. AB2021-576 Resolution adopting the 2022 Annual Construction Program (ACP)  
**Pages 527 - 585**
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 586 - 590**

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

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## **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. AB2021-585 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Drug Enforcement Administration for Cooperative State and Local Task Force Agreement FY2022  
**Pages 207 - 212**
2. AB2021-586 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Drug Enforcement Administration for Program-Funded State and Local Task Force Agreement FY2022, in the amount of \$38,744.00  
**Pages 213 - 220**
3. AB2021-588 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and San Juan County for Whatcom County Veteran Service Officer support services to San Juan County resident veterans, in an amount not to exceed \$10,000  
**Pages 221 - 226**
4. AB2021-604 Request authorization for the County Executive to enter into a contract between Whatcom County and National Service Office for Nurse-Family Partnership to provide technical support and training, in the estimated amount of \$42,444  
**Pages 227 - 257**

## **OTHER ITEMS**

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

1. AB2021-447 Resolution updating the Appendix of the 2015 Comprehensive Economic Development Strategy (CEDS) List  
**Pages 10 - 121**
2. AB2021-582 Ordinance amending the 2021 Whatcom County Budget, request no. 16, in the amount of \$411,953  
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**Pages 171 - 206**

**(From Council Public Works and Health Committee)**

8. AB2021-598 Discussion and request for motion regarding community requested revision to the Birch Bay Golf Cart Zone boundary  
**Pages 258 - 261**

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

9. AB2021-611 Discussion and possible motion to recommend rescinding a previous action of the Council that established a no shooting zone in Drayton Harbor  
**Pages 475 - 482**

**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. AB2021-594 Ordinance amending Whatcom County Code Chapter 2.02 (County Council) to define absence and temporary disability  
**Pages 591 - 595**
2. AB2021-599 Ordinance establishing the Ferry Fare Capital Surcharge Fund  
**Pages 596 - 597**
3. AB2021-601 Ordinance amending the 2021 Whatcom County Budget, request no. 17, in the amount of \$4,967,500  
**Pages 598 - 608**
4. AB2021-606 Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning, to provide additional affordable housing options, including allowing and regulating tiny homes and allowing duplexes in planned unit developments  
**Pages 609 - 631**
5. AB2021-609 Ordinance amending Whatcom County Code Title 3 (Revenue and Finance), specifically Chapters 3.06 (Grants) and 3.08 (Purchasing System)  
**Pages 632 - 649**

**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: AB2021-596

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<b>File ID:</b>	AB2021-596	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/12/2021	<b>Entered by:</b>	AReynold@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Report		
<b>Assigned to:</b>	Council Natural Resources Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Report from the Parks and Recreation Department

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Parks and Recreation biannual report to Council

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### HISTORY OF LEGISLATIVE FILE

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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-447

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<b>File ID:</b>	AB2021-447	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/21/2021	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

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

Resolution updating the Appendix of the 2015 Comprehensive Economic Development Strategy (CEDS) List

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

Resolution updating the Appendix of the 2015 Comprehensive Economic Development Strategy (CEDS) List

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Presentation, Resolution, Report



**TO:** Whatcom County Council  
**FROM:** Whatcom County ADO/Port of Bellingham, Regional Economic Partnership  
**RE:** Comprehensive Economic Development Strategy (CEDS) 2020 Update

### **What is a CEDS and why do we need it?**

A Comprehensive Economic Development Strategy (CEDS) is a planning document that is a prerequisite for the US Economic Development Administration (EDA) designation as an Economic Development District (EDD). CEDS documents must be updated at least every five years in order to qualify for EDA assistance under the Public Works and Economic Adjustment Assistance program.

Currently there are at least two programs in Whatcom County that require an updated CEDS in order to continue eligibility or maintain good standing in the program: the EDA Revolving Loan Fund (RLF) and the EDA pandemic grant funding, both administered via the Port of Bellingham. The RLF has been in existence since 1985 and due to the success of the Port's program the Port recently applied for and was awarded an additional \$500,000 in RLF funds for businesses impacted by COVID-19. Whatcom County EDI funding (.09 funding) also requires an up to date CEDS report and for eligible projects to be on the annually updated Project List. There are other federal funding sources that also require a CEDS. These are important sources of funds for public agencies and small local businesses.

Finally, the CEDS provides a starting place for conversations, discussions, and strategic planning across jurisdictions that can guide Comprehensive Plan updates.

### **Who writes the CEDS?**

The last time Whatcom County completed a [CEDS update was 2015](#) and it was undertaken by the Whatcom Council of Governments (WCOG). The CEDS was transferred, appropriately, to the Whatcom County Associate Development Organization (ADO), which is the Port of Bellingham, in late 2019. The Regional Economic Partnership at the Port is therefore working to update the CEDS by December 2020 for Council and EDA approval.

### **How will this CEDS be different?**

This CEDS will be different from past versions in two significant ways. First, the report and all of its components will be online rather than a PDF. The REP team has contracted with LiveStories, a company that specializes in and has experience in meeting the required content of the CEDS, as well as obtaining relevant specific data and creating dynamic visualizations. This data will be live, so when the sources are updated, so too will any associated graphics. This will make the CEDS much more useful over time and will allow users to easily access basic economic data (historical to present) about Whatcom County.

Second, the report will include a section on disaster and pandemic recovery and specifically discuss the economic impacts of COVID-19 on our community and economy. In addition to highlighting how COVID-19 has changed, and may continue to change, our economy, it will also discuss resiliency and mitigation strategies moving forward.

We are excited about this update and new format as we believe it will allow us to better respond to changes in our regional economy. It is our intent to both fulfill the federal requirements for funding opportunities as well as create a true working strategy with a detailed programmatic approach that will move Whatcom County forward into the future.



# Whatcom County Comprehensive Economic Development Strategy (CEDS) Report: 2021-2025 Update



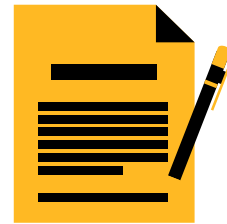
Port of  
Bellingham  
Economic  
Development

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Taking economic  
development to the  
next level

# About the CEDS

## CEDS Report versus CEDS Project List



**Report:** A long range consensus driven planning document that provides a regional architecture and work plan for economic development in the region to be completed by the ADO (and partners).

**Last updated: 2002 and 2015.**



**List:** Infrastructure projects to be completed by public agencies, creates eligibility for EDI, as well as federal and state funding streams.

**Last updated: 2020.**

# > CEDS Process

The CEDS update was led by the Port's economic development team under the direction of the External Review Committee, guided by stakeholder engagement and community outreach.

Matt Aamot, Senior Planner, Whatcom County

Steve Banham, Public Works Director, City of Lynden

Jori Burnett, City Administrator, City of Ferndale

Roswell Cline Jr., Planning Manager, Nooksack Indian Tribe

Rollin Harper, Planner, Cities of Nooksack, Everson, and Sumas

Steve Jilk, General Manager, PUD #1

Donovan Sather, Director of Economic Development and Planning, Nooksack Indian Tribe

Tara Sundin, Community and Economic Development Manager, City of Bellingham

Teresa Taylor, Project Manager, Lummi Indian Business Council

Alex Wenger, Economic Development and Tourism Coordinator, City of Blaine

Bob Wilson, Executive Director, Whatcom Council of Governments

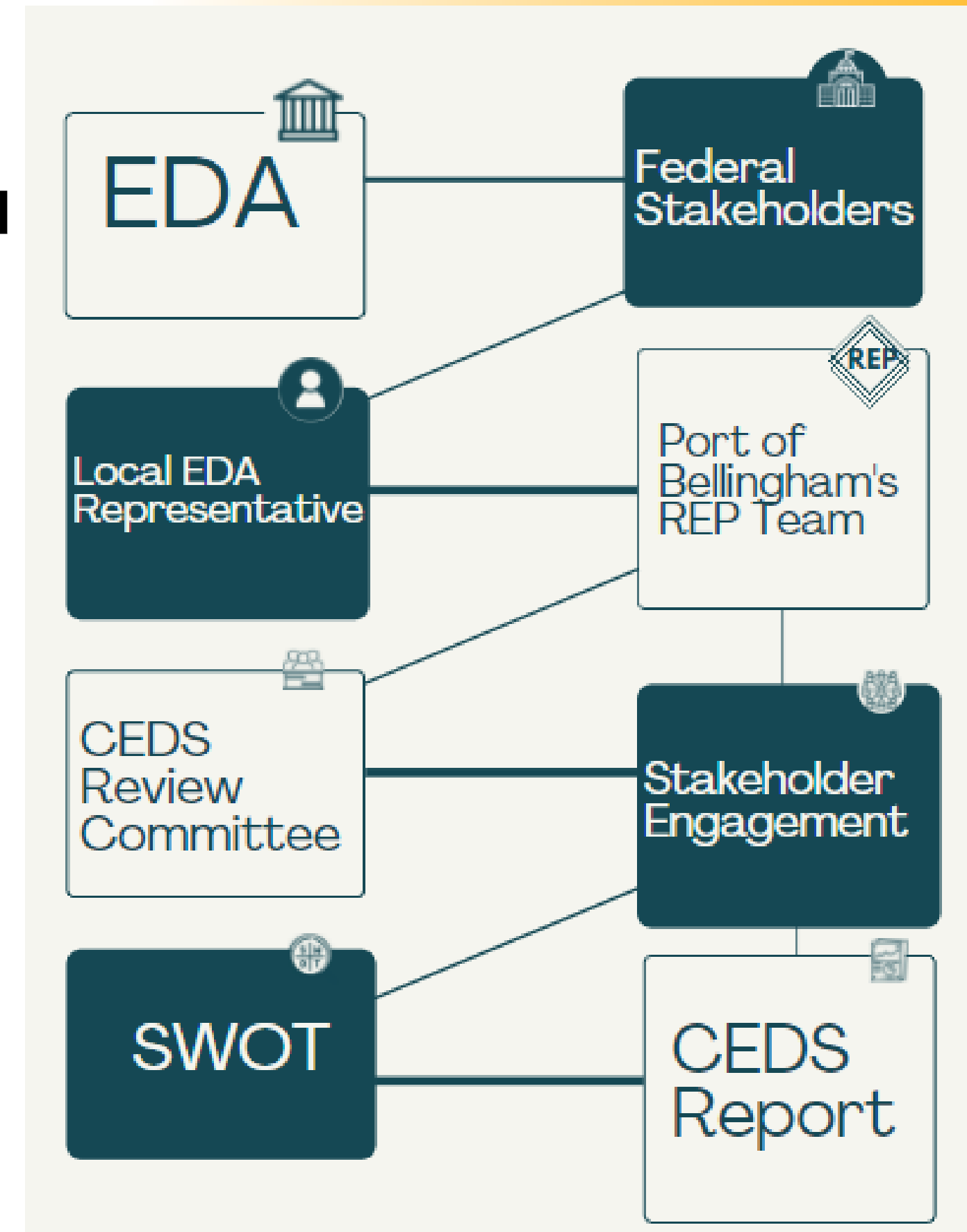
## Port Economic Development Staff

Don Goldberg, Director

John Michener, Economic Development Project Manager

Jennifer Noveck, Research and Communications Manager

<sup>1</sup>Gina Stark, Economic Development Project Manager



# Stakeholder Groups



## **Public sector**

City, county, tribal jurisdictions  
Public infrastructure and  
transportation organizations  
Post-secondary education

## **Private sector**

Companies  
Business groups  
Industry associations

## **Nonprofits**

Community development service  
providers  
Health and social service  
providers

# CEDS Components



1

## SWOT Analysis

An in-depth analysis of strengths, weaknesses, opportunities, and threats.

Completed SWOTS for the County, 7 incorporated cities, the Port, and 13 industry sectors.

3

## Evaluation Plan

Key performance measures and timeline to assess success.

2

## Strategic Action Plan

Identify strategic priorities and challenges, create timetables and implementation plans.

Forms the core of the ADO's work plan.

4

## Economic Resiliency

Discuss how strategies and action plan fits into larger resiliency plans.

# Regional SWOT Results



Based on input from public,  
private, and nonprofit  
stakeholders throughout  
Whatcom County, WA.

# Opportunities and Challenges

For economic and business development in Whatcom County, WA

## OPPORTUNITIES IDENTIFIED

- BLI airline and route expansion
- Shipping Terminal reactivation & new business
- Innovative, value-added ag & marine trades
- Continued & increased interest from Canada
- Increased use of OZs & FTZs
- Expedited, efficient permitting process

## CHALLENGES IDENTIFIED

- Lack of affordable, available housing options
- Lack of affordable, available, quality child care options
- Lack of workers / labor shortage
- Lack of or inadequate infrastructure
- Maintaining a high quality of life and extending those benefits to all residents

# CEDS Goals

- Build upon and strengthen Whatcom County's economic base.
- Develop and enhance critical infrastructure that promotes economic development and resiliency.
- Develop a skilled workforce, expand educational attainment, and align employer needs with education programs and curriculum.
- Create a dynamic relationship between Whatcom County and Lower British Columbia, Skagit, Island, and San Juan Counties.
- Cultivate an economy that values diversity, equity, and inclusion for all.
- Support countywide economic resiliency and recovery efforts.

# > The Hub and Spoke Model

Our strategy revolves around public and private sector partnerships.

As the ADO for Whatcom County, the Port is in a unique position to work with partners throughout the county to achieve economic development goals.



# Strategic Action Plan Example



## Strategy

Continue to promote and support the base economy that Whatcom County has a comparative advantage in including but not limited to advanced manufacturing, agriculture, construction, energy, healthcare, marine trades, recreation, and technology.



## Milestone

Support infrastructure development and the creation of shovel-ready commercial and industrial properties.



## Partners

Stakeholders directly involved in the activity.



## Timeline

Ongoing & long-term

# CEDS Online

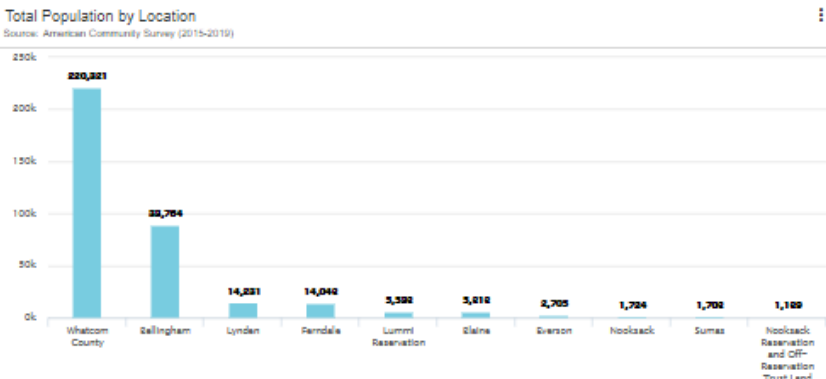


## A REPOSITORY FOR WHATCOM COUNTY'S ECONOMIC DATA

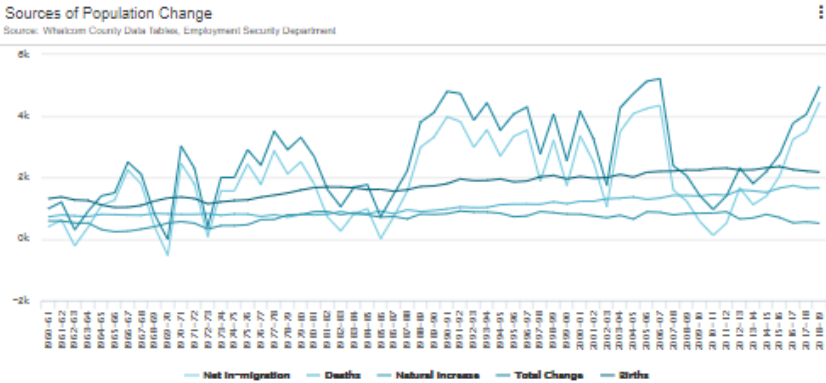


### Population Size

Whatcom County is growing. In 2019, Whatcom County had a population between 220,821 (American Community Survey 2015-2019) and 229,247 (US Census Bureau 2020) [1]. Of that, 58% of Whatcom's population lives in the seven incorporated cities.



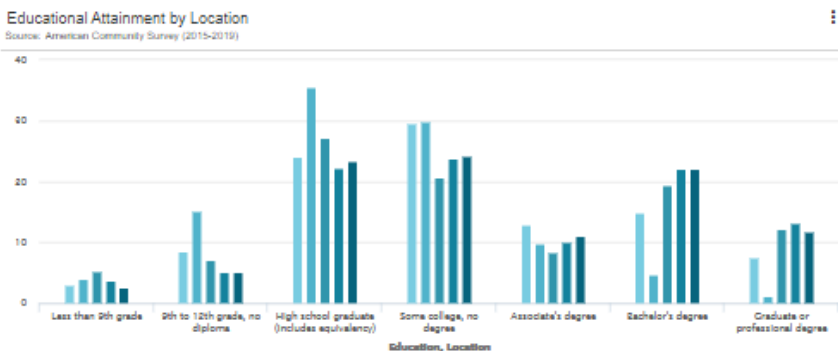
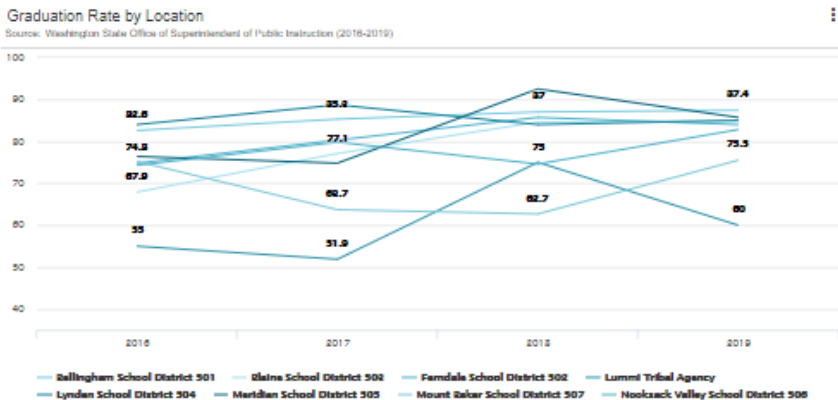
Some of the population change in Whatcom County is natural and due to births and deaths of current residents. However, the majority of the growth is from in-migration to the region. As shown below, in 2018-2019, the total increase in population was 4,950 people. Of that, 4,436 can from in-migration and the natural increase (births minus deaths) was only 514. Given Whatcom County's proximity to Lower Mainland BC and Seattle, both of which have significantly higher populations as well as land and housing costs, this trend is likely to continue, particularly as remote and hybrid working options increase.



Goal 2: Develop a skilled workforce, expand educational attainment, and align employer needs with educational programs and curriculum.

### Education & Degrees

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Customizable data visualizations

Regularly updated

Shared resource



# Feedback

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Per EDA requirements, the CEDS report draft was available for public comment from August 30 - September 30, 2021

## **Submit CEDS to the EDA**

On an as needed basis, with applications

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## **Website for the documents, more info -**

[www.portofbellingham.com/154/Economic-Development](http://www.portofbellingham.com/154/Economic-Development)

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## **Send questions to -**

[jennifern@portofbellingham.com](mailto:jennifern@portofbellingham.com)

PROPOSED BY: Executive

INTRODUCTION DATE: October 26, 2021

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE WHATCOM COUNTY COUNCIL UPDATING THE  
APPENDIX OF THE 2015 COMPREHENSIVE ECONOMIC DEVELOPMENT  
STRATEGY (CEDS)**

**WHEREAS**, the Economic Development Reform Act of 1998 identifies a Comprehensive Economic Development Strategy (CEDS) as a requirement to apply for assistance under the Economic Development Administration's (EDA) economic adjustment and public works program; and

**WHEREAS**, Public Law 105-393, implemented in 1999, amends the Public Works and Economic Development Act of 1965 and re-authorizes Economic Development Administration Programs for five years; and

**WHEREAS**, in 2015, the Whatcom Council of Governments, through an interlocal agreement with the County, completed the work to update the document; and

**WHEREAS**, on March 31, 2015 the County Council officially adopted the 2015 Whatcom County Comprehensive Economic Development Strategy (CEDS) as the County's interim overall economic development plan; and

**WHEREAS**, on annual basis the Port of Bellingham will update the Whatcom County Comprehensive Economic Development Strategy appendix known as the CEDS Project List to add, remove or revise projects on the list to reflect new county priorities and updated community plans or priorities; and

**WHEREAS**, RCW 82.14.370 requires that projects utilizing rural sales tax revenue must be listed in the County's overall economic development plan; and

**NOW, THEREFORE, BE IT RESOLVED** that the Whatcom County Council hereby accepts the updated appendix as submitted by the Whatcom Council of Governments.

**BE IT FURTHER RESOLVED** that the Whatcom County Council officially adopts the 2021 update to the 2015 Whatcom County Economic Development Strategy Appendix.

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

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED as to form:

Christopher Quinn per email 06-14-2021  
Civil Deputy Prosecutor

# WHATCOM COUNTY COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY (CEDS) 2021-2025

COMPLETED BY

**PORT OF BELLINGHAM  
ECONOMIC DEVELOPMENT DIVISION  
REGIONAL ECONOMIC PARTNERSHIP (REP)**

**WHATCOM COUNTY, WA ADO**



**Questions or Comments?**

Jennifer Noveck, Ph.D.

Research & Communications Manager

Regional Economic Partnership, Port of Bellingham

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## ABOUT THE REGIONAL ECONOMIC PARTNERSHIP

The Regional Economic Partnership (REP) is the economic development division at the Port of Bellingham, which is the associate development organization (ADO), a state Commerce designation, for Whatcom County. REP is funded by Washington State Department of Commerce, Whatcom County, the City of Bellingham, and the Port of Bellingham.

## REP MISSION

The goal of REP is to retain and attract livable wage jobs and to assist businesses, entrepreneurs, and local organizations to thrive. We aim to work with our partners to create a resilient community and economy for all. We have expertise in financing, planning, research, real estate, and technology to help businesses start, develop, and grow throughout Whatcom County, Washington.

## CONTACT REP

web: <https://www.portofbellingham.com>

e-mail: [EconDev@portofbellingham.com](mailto:EconDev@portofbellingham.com)

## Contents

<b>I. Summary Background</b>	2
1. Introduction	2
2. CEDS Purpose, Process & Review Committee	2
3. Geography	4
4. Infrastructure	5
5. Economic Conditions & Statistical Description	10
<b>II. SWOT Analyses</b>	21
1. Regional SWOT Analyses	21
2. Priorities	22
<b>III. Action Plan</b>	23
1. Vision	23
2. Goals and Objectives	23
3. Strategy Implementation and Deliverables	27
<b>IV. Evaluation Framework</b>	38
1. Performance Measures	38
2. Evaluation Plan	39
<b>V. Economic Resiliency</b>	39
1. Planning	40
2. Information Networks	41
3. Pre-Recovery Planning	41
<b>VI. Appendices</b>	42
1. Frequently Asked Questions by Stakeholders	42
2. Key Stakeholders	43
3. SWOT Analyses	45
4. Reports and Strategic Documents	52
5. Port of Bellingham Economic Development Division Reporting	53
6. Whatcom County CEDS Project List 2021 Update	54
7. Lummi Nation CEDS Project List 2021 Update	81
<b>VII. References</b>	92

## **I. Summary Background**

### **1. Introduction**

The Regional Economic Partnership (REP), which is the economic development division of the Port of Bellingham (POB), is responsible for economic development and growth for all of Whatcom County. The division was rebranded as the “Regional Economic Partnership” (REP) in 2017 to signify the hub-and-spoke model the team takes to development.<sup>1</sup> REP strives for a sustainable, resilient regional economy through a balanced and collaborative programmatic approach. The team works with the private, public, and nonprofit sectors and connects businesses to economic development and workforce resources throughout Whatcom County.

In 2012, the association development organization (ADO) status was transferred to the Port of Bellingham in an effort to cultivate long-term consistency and generate a more programmatic approach to economic development in Whatcom County. ADOs are local organizations working on economic development on behalf of the Washington State Department of Commerce and each county has an ADO. This was a natural fit as the POB, like all Port districts in Washington, is responsible for managing transportation gateways and supporting economic development. With countywide jurisdiction, the Port is a great place to house the ADO. REP benefits from being housed at the Port because resources from multiple sources are pooled, which ultimately saves money. This collaborative model creates more security, allows for long-term planning, and generates economic resiliency for all of Whatcom County.<sup>2</sup>

### **2. CEDS Purpose, Process & Review Committee**

The Whatcom County Comprehensive Economic Development Strategy (CEDS) has been completed and updated two times in the recent past: in 2002 by the Port of Bellingham's Economic Development division and in 2015 by the Whatcom Council of Governments (WCOG). As the economic development ecosystem in the county evolved and the Port's economic development staff grew, the responsibility for updating the CEDS report and project list were transferred from WCOG to the Port's economic development division in 2019.

The 2021-2025 report update was led by the Port's economic development staff, overseen by the CEDS External Review Committee, and informed by broad stakeholder engagement within the community throughout the entire process. Stakeholders included, but were not limited to Whatcom County, other divisions of the Port of Bellingham, the seven incorporated cities, the Lummi Indian Business Council, the Nooksack Indian Tribe, the Public Utility District (PUD) #1, WCOG, the Northwest Workforce Council, the Western Washington University Small Business Development Center (WWU SBDC), the Bellingham Regional Chamber of Commerce, Whatcom County Business and Commerce Advisory Committee, health and social organizations, and other economic and community development service providers. [Team Whatcom](#), a local county-wide group that forms the core of economic development services in the county, was solicited and presented to multiple times throughout the process for feedback and input in 2020-2021. **Appendix VI.2** has a full list of stakeholders solicited for input.

Stakeholder engagement ran from summer 2020 through summer 2021 and involved:

- Identifying strategic priorities from the stakeholder's perspective
- Soliciting input and feedback on goals, objectives, and strategies

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<sup>1</sup> The hub-and-spoke paradigm stems from transportation and distribution planning. The hub signifies a central point and organizes routes on various outgoing and incoming spokes. As the ADO for Whatcom County, the economic development department at the Port utilizes this concept to connect businesses to our partners and their many services.

<sup>2</sup> Other ports that serve as the county ADO in Washington include Port of Chelan County, Port of Columbia, Port of Douglas County, and the Port of Walla Walla.

- Soliciting input and feedback on SWOT analyses
- Asking what additional stakeholders should be solicited for participation

REP also reviewed CEDS best practices, reviewed input and guidance from data consulting company LiveStories, and appraised many examples of CEDS in other communities throughout the United States. Numerous reports and local documents were also consulted and can be found listed in **Appendix VI.4**. Based on this information as well as the EDA content guidelines, the CEDS External Review Committee was established in January 2021.

The CEDS External Review Committee includes a representative from each jurisdiction (Whatcom County, Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas) both sovereign tribes (the Lummi Nation and the Nooksack Indian Tribe) as well as PUD #1 and WCOG. All four staff members from the Port of Bellingham's economic development team were also on the committee. Members are listed below.

### **CEDS External Review Committee**

**Matt Aamot**, Senior Planner, Whatcom County

**Steve Banham**, Public Works Director, City of Lynden

**Jori Burnett**, City Administrator, City of Ferndale

**Roswell Cline Jr.**, Planning Manager, Nooksack Indian Tribe

**Rollin Harper**, Planner, Cities of Nooksack, Everson, and Sumas

**Steve Jilk**, General Manager, Whatcom County PUD #1

**Donovan Sather**, Director of Economic Development and Planning, Nooksack Indian Tribe

**Tara Sundin**, Community and Economic Development Manager, City of Bellingham

**Teresa Taylor**, Project Manager, Lummi Indian Business Council

**Alex Wenger**, Economic Development and Tourism Coordinator, City of Blaine

**Robert H. Wilson**, Executive Director, Whatcom Council of Governments

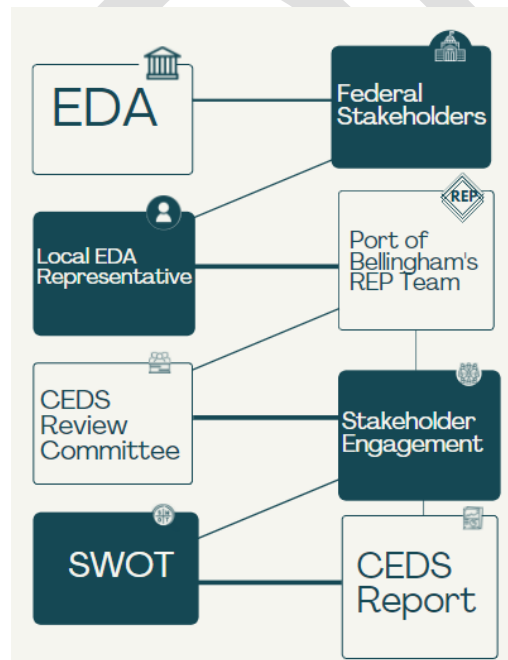
### **Port of Bellingham Economic Development Division Staff**

**Don Goldberg**, Director

**John Michener**, Economic Development Project Manager

**Jennifer Noveck**, Ph.D., Research and Communications Manager

**Gina Stark**, Economic Development Project Manager



**Figure 1** illustrates the CEDS cycle and stakeholder engagement process. The CEDS cycle begins with the Economic Development Administration (EDA), which issues guidance. The EDA engages with federal stakeholders and identifies strategic investment priorities. Each region has a local representative that organizations, such as the Port of Bellingham's economic development team, work with on an array of programs and funding opportunities, including CEDS planning. During the process, the economic development division at the Port worked with a CEDS External Review Committee and did stakeholder engagement on multiple inputs to the final CEDS report, including the strengths, weaknesses, opportunities, and threat (SWOT) analyses, feedback on CEDS goals and objectives, as well as the division's strategies and internal work plan items.

The EDA provides content guidelines for preparing a CEDS but also allows the flexibility for a CEDS to emphasize

Figure 1: The CEDS Cycle and Stakeholder Engagement Process

strategies or issues important to a region as long as the process and outcomes do not conflict with the guidelines. As neither Whatcom County nor the Port of Bellingham received EDA funding to prepare the CEDS, nor is Whatcom County part of an EDA-designated economic development district (EDD), this CEDS document as well as the 2015 version are “alternative CEDS.”

While a CEDS report must be updated every five years to remain eligible to compete for EDA funding, a county is not mandated to do so if it does not plan to seek funds in any given year, or if it does not wish to have an overall economic development strategy. The Port's economic development division believes having an overall strategy brings many benefits to economic development in Whatcom County. The team's purpose in completing this CEDS update are threefold: to promote a more efficient, stable, programmatic approach to development, to fulfill EDA requirements so that many actors within the County can access potential funding sources more successfully, and to create an internal work plan for the team.

Many entities within Whatcom County, including the Port of Bellingham's economic development division, have sought or plan to seek EDA funds, particularly as there are opportunities for COVID-19 relief funding, infrastructure funding, and disaster recovery funding. The Port of Bellingham maintains two EDA funded Revolving Loan Funds (RLFs) whose lending plans are directly linked to the CEDS. These funds have provided over \$1 million in loans and leveraged an additional \$9 million from regional lending institutions.

Many states, including Washington, require counties to have an approved CEDS in order to be eligible for certain state funding programs that support local economic development. The Whatcom County Economic Development Investment (EDI) program requires projects be on the CEDS Project List as part of eligibility. There are also many other federal funders who either require projects be part of a regional strategy for consideration or who award more points to project applications if they are a part of a regional strategy. Having one, therefore, provides Whatcom County with a myriad of potential financial benefits and economic development opportunities. Understanding the benefits, the Lummi Nation has also recently completed and submitted its own CEDS report to the EDA as of summer 2021.<sup>3</sup>

### **3. Geography**

Whatcom County is on the land of the Lhaq'temish (Lummi), Nuxwsa'7aq (Nooksack), Coast Salish, Nle?kepmx Tmíxw (Nlaka'pamux), Nuwhaha, Sauk Suiattle, Semiahmoo, and Stillaguamish tribes and people past and present.<sup>4</sup>

As illustrated in **Figure 2** below, Whatcom County borders Lower Mainland British Columbia (BC) to the north, Skagit County to the south, Okanogan County to the east, and the San Juan Islands to the west. The Lummi Indian Reservation is primarily to the west of Bellingham and approximately 20 miles south of the



*Figure 2: Infographic map of Whatcom County, Washington that shows the seven incorporated cities, the Lummi Nation Reservation, and the Nooksack Indian Tribe Reservation.*

<sup>3</sup> As of October 2021, the Lummi Nation CEDS document is pending EDA approval and will be linked in the appendix of this document as soon as it is made available.

<sup>4</sup> Drawn from <https://native-land.ca/>. This map tool notes that it does not represent or intend to represent official or legal boundaries of any Indigenous nations. To learn about definitive boundaries, contact the nations in question.

Canadian border and the Nooksack Indian Reservation is located near Deming and approximately 12 miles south of the Canadian border.

Three islands in the Strait of Georgia – Lummi, Portage, and Eliza – are part of Whatcom County or the Lummi Nation Reservation. Lummi Island is part of Whatcom County with a small population and many businesses. There is regular ferry service between Lummi Island and the mainland. Eliza Island lies to Lummi Island's southern tip. Portage Island is fully within the jurisdiction and boundaries of the Lummi Reservation. Point Roberts, which is on the southern tip of the Tsawwassen peninsula, is a highly unusual geographic feature of Whatcom County known as a *pene-exclave*: land area of one country that is accessible only by traveling through that of another. Point Roberts can be reached from the rest of the county, and vice versa, by boat or via two border crossings and a 23-mile drive through Canada.

Whatcom County also has seven [incorporated cities](#): Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas. There are also several unincorporated communities with substantial populations such as Birch Bay, Lummi Island, Point Roberts, the Columbia Valley, and several communities in Eastern Whatcom County. The county has many incredible mountain-river-sea natural features such as 1.2 million acres of public land, some of the cleanest air in the US, the snowiest mountain in the Lower 48 (Mount Baker), over 130 miles of coastlines, 188 watersheds, and over 100,000 acres of active farmland.

Whatcom County has many regional benefits and amenities to offer. The county boasts access to over eight million residents within 100 miles, four post-secondary institutions, 90,000 jobs, nearly 6,000 registered business, and five land-based ports of entry. The Port of Bellingham, which is a countywide Port district, offers an international airport (Bellingham International Airport (BLI)), the Bellingham Shipping Terminal (BST) for cargo handling and distribution, the Bellingham Cruise Terminal (BCT), which is the southern connection to the Alaska Marine Highway System, and two full-service marinas (Squalicum and Blaine Harbors).

#### **4. Infrastructure**

##### **Utilities and transportation infrastructure**

Infrastructure development and improvement are critical to Whatcom County's future economic development. Whatcom County is one of eighteen counties required to carry out comprehensive planning activities, which includes utilities and transportation infrastructure elements.<sup>5</sup> Washington State's [Growth Management Act \(GMA\)](#) establishes thirteen goals that are to act as the basis for comprehensive plans. GMA-mandated activities are therefore undertaken by Whatcom County and the seven incorporated cities. The Lummi Nation and Nooksack Indian Tribe carry out similar processes. Utility planning and development occurs under the city, county, port, and tribal planning and community development and public works departments, as well as the Birch Bay Water and Sewer District, Lake Whatcom Water and Sewer District, and other districts in the county.

In addition, the PUD #1 has countywide authority to supply water and electric services. The PUD's electric system peak usage is 29.6MWs and the district owns 15 miles of transmission/distribution lines and three substations. The PUD also operates two water systems that provide industrial grade (non-potable) water to Cherry Point, irrigation to at least 50 customers, and potable water and fire protection for a large light-industrial park at Grandview exit area of I-5. In total, they treat and deliver 5.4 billion gallons of water per year (PUD #1 Fast Facts 2021).

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<sup>5</sup> Per RCW 36.70A.020, the GMA topics are summarized by the MSRC (2021) as “concentrated urban growth, sprawl reduction, regional transportation, affordable housing, economic development, property rights, permit processing, natural resource industries, open space and recreation, environmental protection, early and continuous public participation, public facilities and services, historic preservation, and finally shoreline management (RCW 36.70A.480).”

For transportation infrastructure, WCOG is a regional planning conference and is governed by the [Whatcom Transportation Policy Board](#), which includes voting members from city, county, port, state, and tribal governments. WCOG is also integrated with the state's transportation planning process, which falls under the responsibility of the Washington State Department of Transportation (WSDOT). As a result, [Whatcom Mobility 2040](#) is the long-range transportation plan for all of Whatcom County. WCOG also manages the [Transportation Improvement Program \(TIP\)](#), which provides a comprehensive six-year listing of improvements within the county that are included on the regional transportation network as defined by Whatcom Mobility 2040.

Whatcom County has limited remaining buildable lands for development and a growing population<sup>6</sup>. Nearly half the land in Whatcom County is public land. The county also committed itself in its 2016 Comprehensive Plan to maintaining 100,000 active acres of farmland. Given these restrictions combined with the fact that much of the remaining buildable lands are in critical areas (i.e. steep slopes, wetlands), new industrial and residential developments must be carefully planned and will require significant investments into wetland mitigation banks<sup>7</sup>. Whatcom County also has an affordable housing and worker-housing crisis. The county needs more units of all varieties and at all price points. Property costs and values continue to rise. The cost of improving and developing infrastructure in Whatcom County is significant. For example, the current total of the projects on the 2021 CEDS list totals approximately \$1.1 billion. This does not include TIP projects nor does it include many, if not most, city or port capital facility projects. This means that development may require creative solutions such as innovative public-private partnerships in order to happen.

### **I-5 Infrastructure and Utilities Data Collection Project**

In order to facilitate countywide coordination and cost-savings, in 2019 with funding from Whatcom County, the Port of Bellingham's economic development staff undertook an infrastructure GIS data collection project that included many jurisdictions and communities along the I-5 Corridor. Each jurisdiction within Whatcom County maintains its own utility and infrastructure data and prior to this project there was no single web map or agency that a user could go to in order to view all available data in Whatcom County. **Figure 3** below illustrates the data collected to date for electric, fiber, and transmission lines. **Figure 4** shows the data collected to date for water, sewer, and stormwater lines.

The plan is to expand the current infrastructure GIS database to all of Whatcom County, identify additional infrastructure data of interest, and to maintain regular updates in order to help partners facilitate efficient infrastructure development that has regional impacts, with a particular emphasis on reducing the cost of developing affordable housing and worker housing options.<sup>8</sup>

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<sup>6</sup> Relatedly, in 2017 Whatcom County was required by the Washington State legislature to undertake a review and evaluation program (also called the Buildable Lands program and report). The Review and Evaluation program has two stated purposes: to "determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions contained in the county and city comprehensive plans with actual growth and development that has occurred; and to identify reasonable measures, if necessary, to reduce the differences between growth and development assumptions contained in the county and city comprehensive plans with actual development patterns" (Buildable Lands Guidelines 2018, p. 2).

<sup>7</sup> According to the EPA (2021) a "mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or (in certain circumstances) preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources permitted under Section 404 or a similar state or local wetland regulation. A mitigation bank may be created when a government agency, corporation, nonprofit organization, or other entity undertakes these activities under a formal agreement with a regulatory agency."

<sup>8</sup> Gathering an inventory of Whatcom County assets was a suggested deliverable of the [Whatcom Futures Report](#) (2014, p.4).

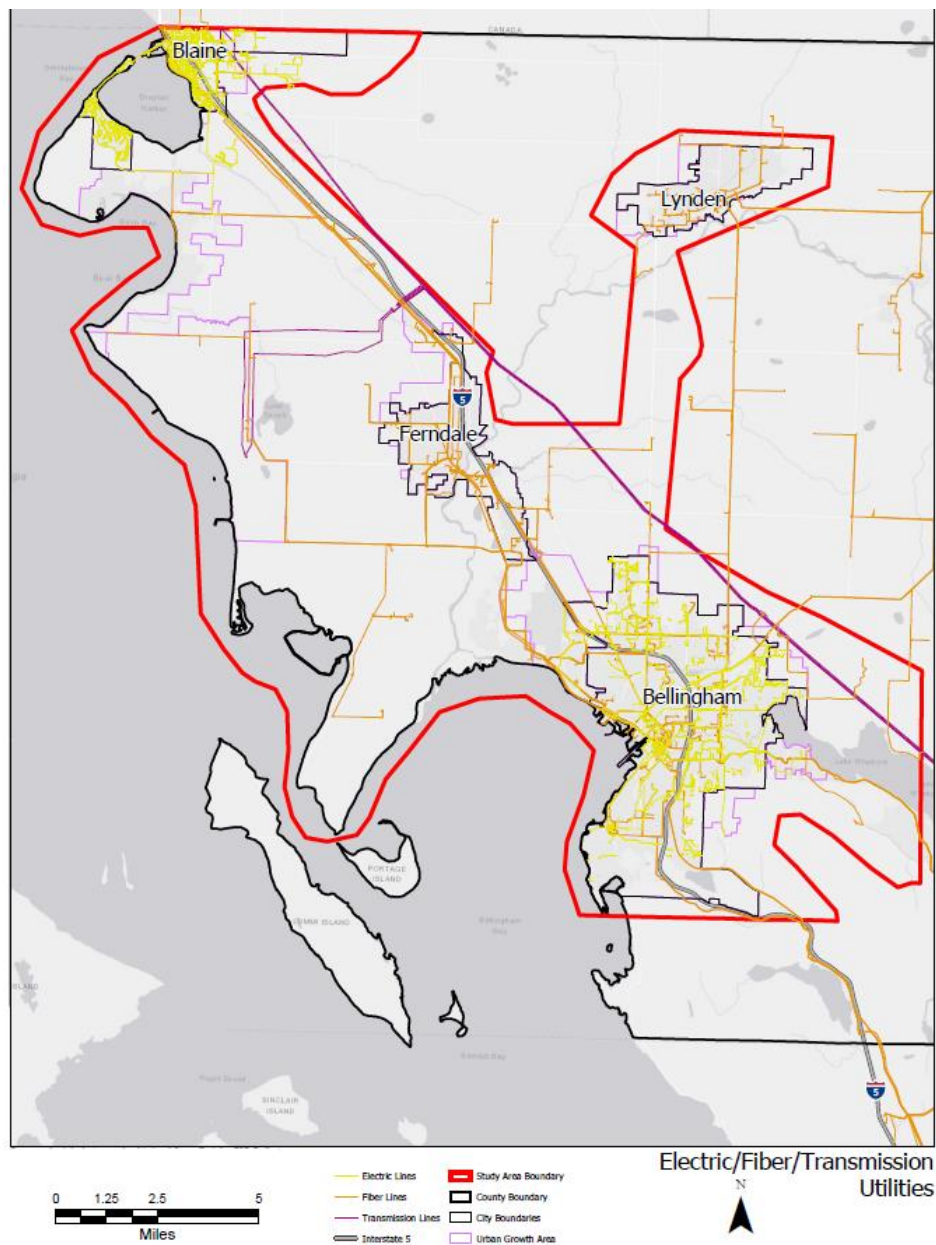


Figure 3: This map shows where the electric, fiber, and transmission lines are located around the I-5 Corridor. The plan is to expand this database to all of Whatcom County.

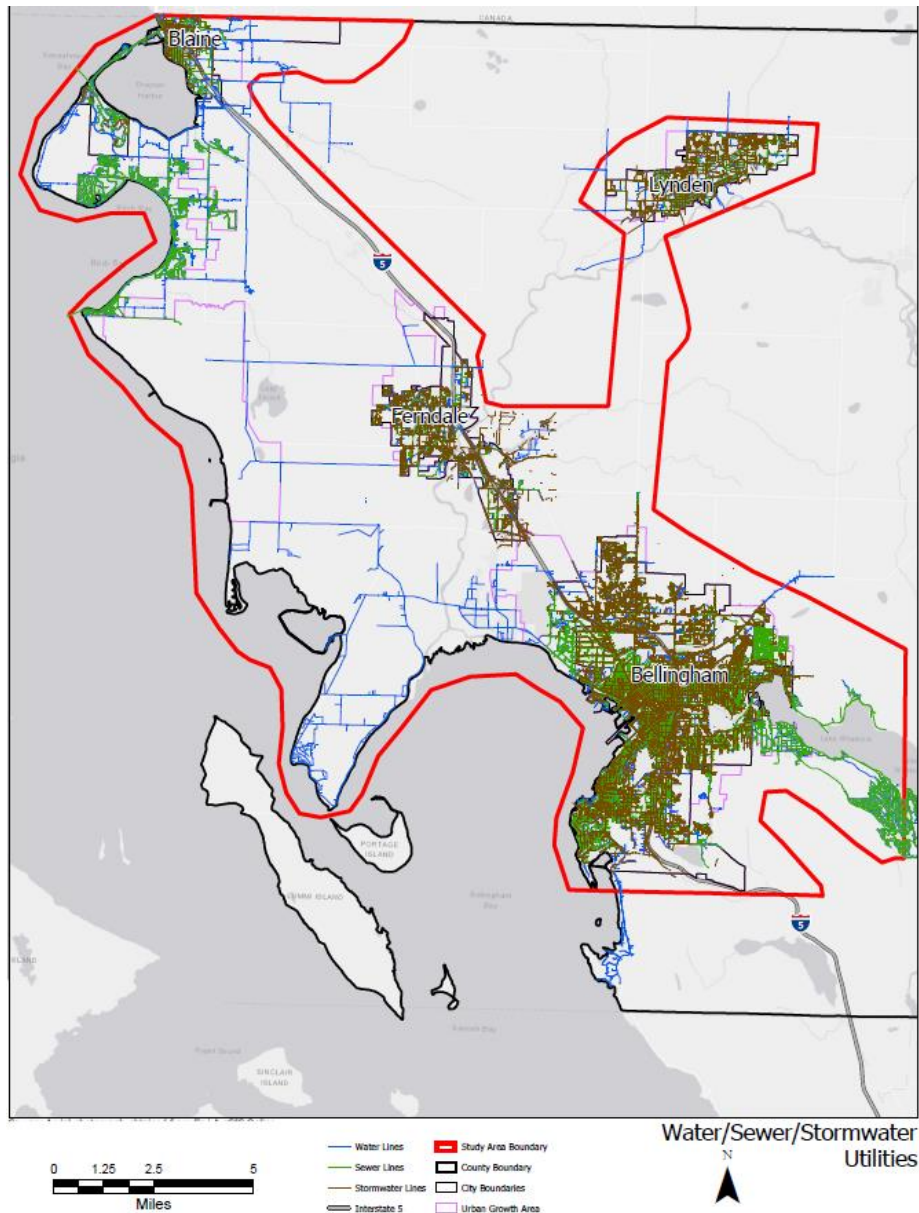


Figure 4: This map shows where the water, sewer, and stormwater lines are located around the I-5 Corridor. The plan is to expand this database to all of Whatcom County.

## Broadband infrastructure

Broadband infrastructure is critical to the growth of Whatcom County's economy and requires increased investment. Throughout the United States, there exist significant gaps in access to affordable high-speed internet services. These inadequacies can be due to a complete lack of physical infrastructure or the infrastructure could be insufficient for certain household and business needs. There are also major disparities in terms of access, quality, and cost of services. This is true in Whatcom County, Washington.

Consistent, meaningful, and unbiased data on broadband accessibility and internet speeds is difficult to come by. Therefore, it is best to evaluate multiple sources. Starting with the Federal Communications Commission (FCC) Form 477 data, there are five broadband providers in Eastern Whatcom County (Census Tract 101) with a median speed of 12 Mbps (megabytes per second) download speeds and 1 Mbps upload speeds (e.g. 12/1 Mbps). Speedtests by Ookla data finds that multiple regions in Whatcom County have median speeds below 25/3 Mbps, including but not limited to the Lummi Nation, Lummi Island, Point Roberts, and Eastern Whatcom County<sup>9</sup>. The FCC (2018, 2020) benchmarked fixed services to be at a minimum of 25/3Mbps. Most consider this speed to be the minimum for an internet connection that allows users to do basic internet functions, such as utilizing streaming services. They recommend higher speeds if there are multiple devices on the same service.

Other data sources such as the American Community Survey (ACS) and the Department of Commerce State Broadband Office found serious holes in connectivity, speed, and access in Whatcom County. According to the ACS (2018) data there are areas of Whatcom where close to zero percent of households have no internet, primarily around the Bellingham area. The ACS (2018) also found that 534 households in Eastern Whatcom are completely without internet (+/- 206), which is approximately 17.4% of households. This is higher than the national figure of 14%. Regardless of data source, it is evident that there are access and quality issues through multiple parts of Whatcom County.

Private internet providers have not been able to build broadband in places like Eastern Whatcom County due to the high expense of last mile infrastructure<sup>10</sup> to households and low rate of return due to the low number of potential customers. Public entities, such as the Port of Bellingham, therefore began investing and building broadband infrastructure in response to the lack of investment by the private sector.

In fall 2018, long-term planning for broadband expansion into unserved and underserved areas began at the Port of Bellingham after ports in Washington State were given the authority to build out fiber optic infrastructure in the communities they serve. In November 2018, the Community Economic Realization Board (CERB) [awarded the Port of Bellingham a planning grant](#). With additional funding from PUD #1, the Port completed the [Whatcom County Rural Broadband Feasibility Study](#). The study identified broadband infrastructure routes and accessibility based on needs assessments in unserved and underserved communities.

The Whatcom County Rural Broadband Project is a long-term plan to build an open access dark fiber broadband network that will provide quality affordable services. Under this plan, multiple internet providers of any size can lease fiber and provide internet services to the end customer. The Port of Bellingham has secured funding from the Whatcom County EDI program (\$2 million) and CERB (\$1,168,781) to build broadband infrastructure. The Port is working with a local Internet Service Provider (ISP) to extend a fiber network to north Mosquito Lake road and East Nooksack area. The project will begin in 2022 and must be completed by 2023. Addressing the broadband needs of Whatcom County is estimated to cost a minimum of \$15-\$20 million.

The Port of Bellingham, in partnership with PUD #1 and County, is actively seeking additional funding and has plans to utilize existing funding from the county, state, and federal government in a fiscally responsible manner to continue to identify gaps and build fiber in unserved and underserved areas that will provide equitable access to affordable high-speed internet. As part of this process, the Port and the PUD signed an Inter-local Agreement (ILA) stating agreed upon broadband goals and objectives. The ILA established a Broadband Steering Committee, which includes a representative from both Commissions, the Port Executive

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<sup>9</sup> Ookla is a global company in fixed broadband and mobile network testing applications, data, and analysis. Users can test their current network speed at: <https://www.speedtest.net/>

<sup>10</sup> Last-mile infrastructure is broadband infrastructure that serves as the final leg connecting the broadband service provider's network to the end-use customer's on-premises telecommunications equipment.

Director, the PUD General Manager, and broadband staff from each organization. The Steering Committee's directive and goal is to make decisions on broadband policy, identify funding opportunities, and make recommendations to each governing body as it pertains to building, maintaining, and operating the Whatcom County rural broadband network.

## **Healthcare infrastructure**

The economic development division of the Port is neither a healthcare provider nor a public health entity. Public health issues fall under the jurisdiction of Whatcom County Health Department. However, having a healthy population is key to having a resilient and sustainable economy. It is therefore important to highlight the current healthcare infrastructure found in Whatcom County. As development and stakeholder engagement of the CEDS started during the COVID-19 pandemic in summer 2020, inadequate healthcare infrastructure was and continues to be a top concern throughout Whatcom County.<sup>11</sup>

Healthcare infrastructure and particularly the limited number of hospital beds and intensive-care unit beds available was a motivating factor in lockdowns and temporary business closures throughout the United States. Hospital beds occupied by COVID-19 patients was also one metric used throughout the pandemic to assess county-level progress with the virus<sup>12</sup>. During the phased reopening process, related metrics were used to determine if counties could move into new phases of reopening (higher capacity limits, fewer restrictions on business and event activity) or not. Whatcom County currently has one hospital with 255 beds, of which 24 are ICU beds, for nearly a quarter million residents.

COVID-19 aside, many communities and stakeholders in the county were concerned about healthcare services prior to the pandemic. Many of these issues have economic impacts, such as the continuing mental health crisis and accessibility of health care services. For example, there are populations throughout Whatcom County that have to travel significant distances to access healthcare services. Residents of Point Roberts have to make two international border crossings in order to access healthcare services in the United States. Those in the Eastern part of Whatcom County may need to drive an hour or more for certain healthcare services. Because of the pandemic the Lummi Nation and the Nooksack Indian Tribe have taken steps towards expanding and building new healthcare facilities, which is reflected in the updated 2021 CEDS Project List.

## **5. Economic Conditions & Statistical Description**

### **Demographics**

Whatcom County is growing. In 2019, Whatcom County had a population between 220,821 (American Community Survey 2015-2019) and 229,247 (US Census Bureau 2020).<sup>13</sup> Of that, 58% of Whatcom's population lives in the seven incorporated cities. **Figure 5** below illustrates the population breakdown for the

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<sup>11</sup>Recognizing that health and the economy are inextricably intertwined, the Port of Bellingham's economic development division and the Whatcom County Health Department issued a [joint framework for reopening](#), outlining each departments responsibilities, during the COVID-19 pandemic. This included co-marketing the countywide Safer. Stronger. Together. campaign. The ultimate goal of that campaign was and continues to be "to keep our community healthy while we build consumer confidence and reopen our economy" (Whatcom Together, About 2021).

<sup>12</sup> The original Roadmap to Recovery program for Washington State utilized the following metrics related to the pandemic to determine reopening phases: rate per 100k of newly diagnosed confirmed and probable cases over two weeks, average daily COVID-19 testing rate per 100k over a week, percent of molecular tests over a week, percent of adult staffed acute care beds occupied by patients, staffed acute care beds occupied by adults with suspected and confirmed COVID-19, percent of adult ICU staffed beds occupied, percent of adult ICU staffed bed occupied by COVID-19 patients.

<sup>13</sup> US Census (2020) data will start to become available in September 2021 through the end of the year on a weekly basis. Data tables will be updated on the CEDS website as soon as the data becomes available and data updates will be incorporated into the CEDS report on an annual basis. The next update is in 2022.

seven incorporated cities, the Lummi Nation Reservation, and the Nooksack Reservation and Off-Reservation Trust Land.

### Total Population by Location

Source: American Community Survey (2015-2019)

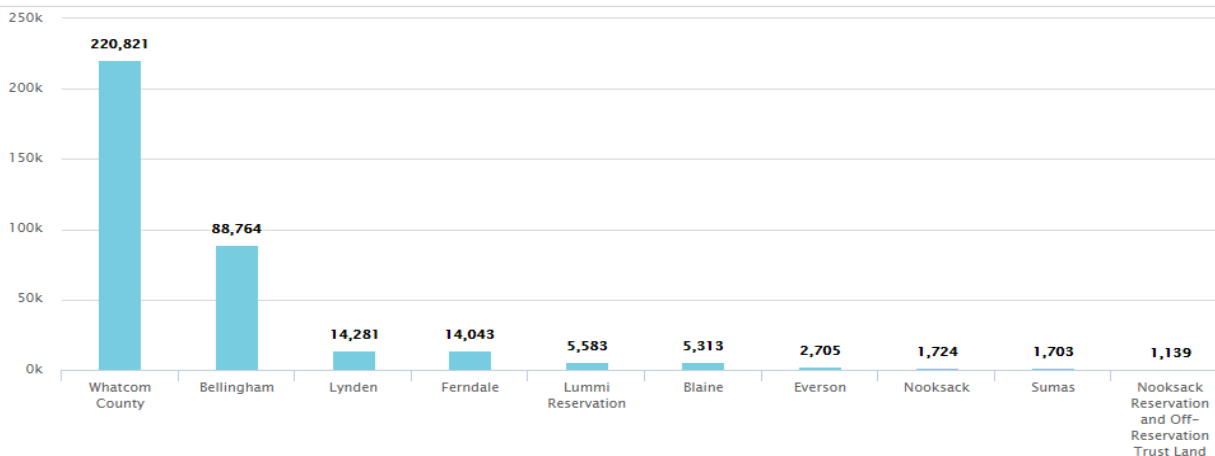


Figure 5: Population by location in Whatcom County, WA.

### Sources of Population Change

Source: Whatcom County Data Tables, Employment Security Department

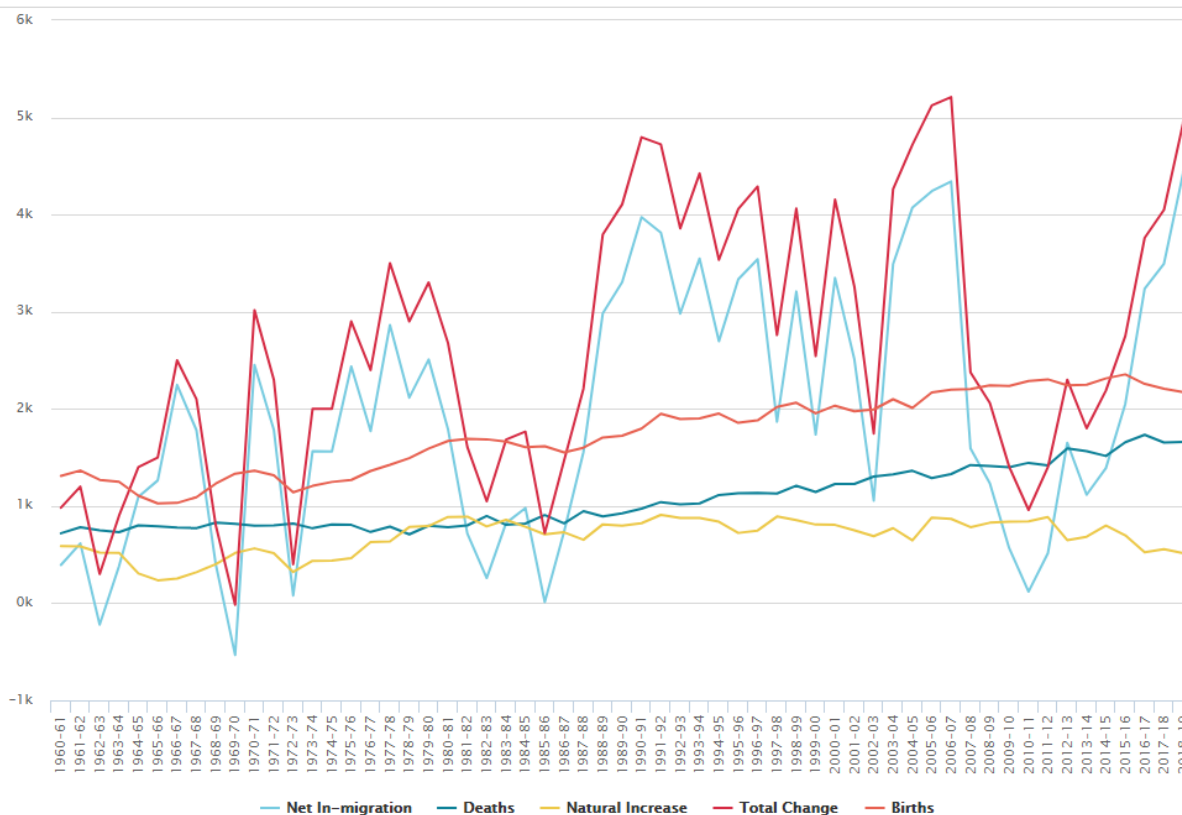


Figure 6: Sources of population change in Whatcom County, WA.

Some of the population change in Whatcom County is natural and due to births and deaths of current residents. However, the majority of the growth is from in-migration to the region. As shown in **Figure 6** above, in 2018-2019, the total increase in population was 4,950 people. Of that, 4,436 can from in-migration and the natural increase (births minus deaths) was only 514. Given Whatcom County's proximity to Lower Mainland BC and Seattle, both of which have significantly higher populations as well as land and housing costs, this trend is likely to continue, particularly as remote and hybrid working options increase.

## Age demographics

Whatcom County's population is aging. According to the American Community Survey (2015-2019), an estimated 22.7% of Whatcom's population was over 60 years of age and 16.4% were over 65. **Figure 7** below illustrates the population broken down by age groups in Whatcom County and on the Lummi Reservation and Nooksack Reservation and Off-Reservation Trust Land. According to [Project Equity and the Whatcom Community Foundation](#) 50% of all businesses in Whatcom County are owned by people over 55.

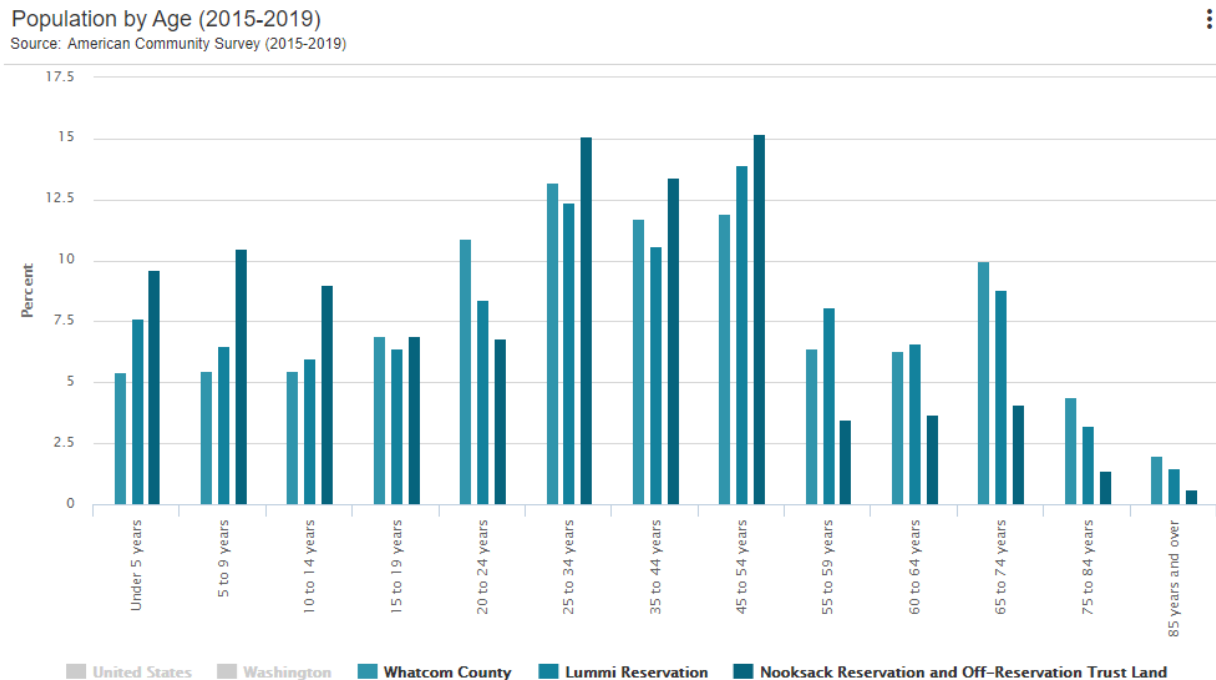


Figure 7: This figure shows the population by age group based on ACS (2015-2019) data for all of Whatcom County, as well as the Lummi Reservation and the Nooksack Reservation and Off-Reservation Trust Land.

## Race and ethnicity demographics

As shown in **Figure 8**, 83.9% of Whatcom County identifies as white. The next largest group within the county are people who identify as being two or more races, which comprises 4.4% of the population. 4.1% identify as Asian, and 3% identify as Native American or Alaska Native. Only 1% of the Whatcom population identifies as Black.

## Population by Race

Source: American Community Survey (2015-2019)

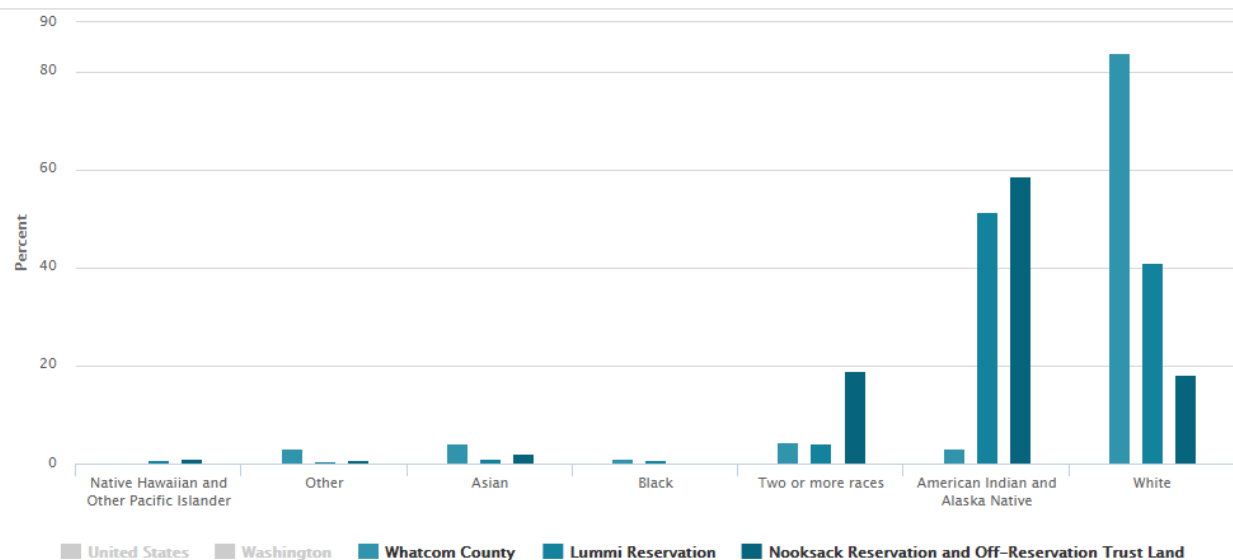


Figure 8: This figure shows the population by race based on ACS (2015-2019) data for Whatcom County, the Lummi Reservation, and the Nooksack Reservation and Off-Reservation Trust Land.

Given the large amount of in-migration to Whatcom County that is occurring, we expect these demographics to shift significantly over time.

## Educational attainment

Education data reveals that Whatcom County has a highly educated workforce. According to the ACS (2015-2019) data in **Figure 9** below, 22.1% of the population has a Bachelor's degree, 11% have an Associate's degree, and 11.7% have a graduate or professional degree.

## Educational Attainment by Location

Source: American Community Survey (2015-2019)

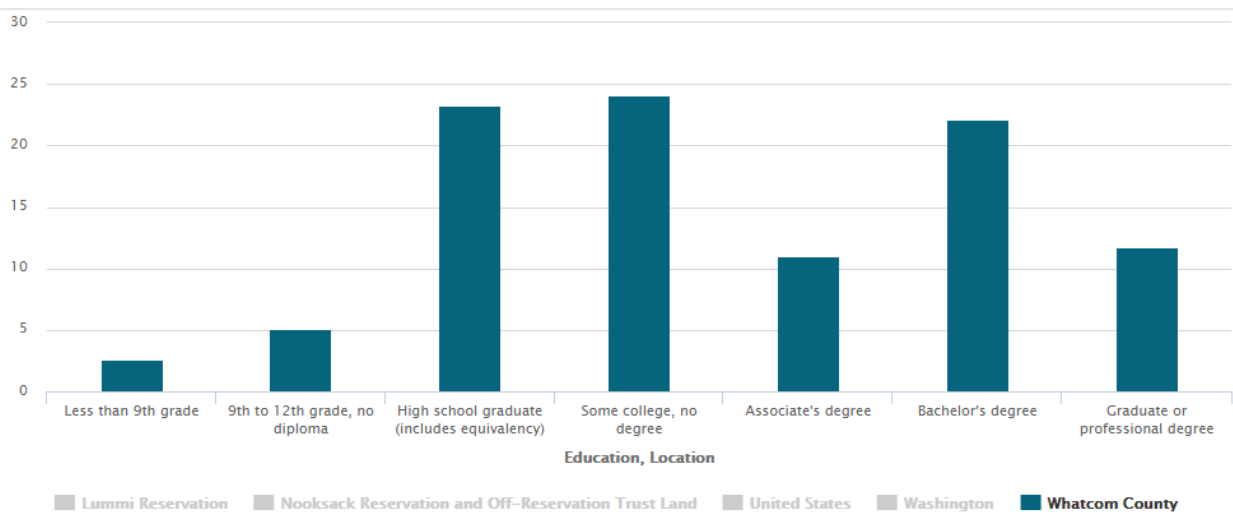


Figure 9: This figure shows educational attainment in Whatcom County, WA.

Washington State's Path to 70% goal pushes for 70% of the population having some post-secondary credentials by 2030 (Washington Roundtable 2018). According to the ACS (2015-2019) data, Whatcom County is close to this goal with 69.2% of its population have at least some college or more. Whatcom County has four institutions that provide post-secondary and workforce education: Western Washington University, Whatcom Community College, Bellingham Technical College, and Northwest Indian College.

## Employment & industry

In Whatcom County there are two primary entities that oversee labor and workforce issues: Washington State Employment Security Department (ESD) and the Northwest Workforce Council (NWC). NWC has authority in Whatcom, Skagit, Island, and San Juan counties and ESD has a dedicated Northwest Washington staff person who covers the same counties.<sup>14</sup> ESD works on a range of issue with a focus on reemployment and job opportunities. Northwest Workforce advocates for regional workforce needs, leads industry panels and works on industry specific issues, helps employers to build a skilled workforce, offers training programs, and coordinates WorkSource, which links job seekers to opportunities.<sup>15</sup>

There are over 6,000 registered businesses with employees in Whatcom County (Office of Financial Management, Forecasting and Research Division 2021). Of these businesses, retail, healthcare and social assistance, manufacturing, construction, accommodation and food services, as well as other professional services have the largest number of employees. The same industries also have the largest annual payrolls in the county with manufacturing making up 20%, construction 18%, healthcare 16%, and retail trade 10%.

**Nonfarm employment, not seasonally adjusted**

Industry Title	2021		2020		2019		2018	
	June	May	June	May	June	May	June	May
Total Nonfarm	91,000	90,600	86,700	83,700	97,300	97,300	96,000	95,900
Total Private	73,800	73,400	69,900	67,100	78,300	78,100	77,100	77,100
Goods Producing	17,900	17,700	17,000	16,800	18,900	19,000	18,800	19,000
Mining, Logging, and Construction	8,400	8,300	7,400	7,200	8,000	8,300	8,400	8,700
Manufacturing	9,500	9,400	9,600	9,600	10,900	10,700	10,400	10,300
Service Providing	73,100	72,900	69,700	66,900	78,400	78,300	77,200	76,900
Private Service Providing	55,900	55,700	52,900	50,300	59,400	59,100	58,300	58,100
Trade, Transportation, and Utilities	16,100	16,100	15,200	14,400	16,600	16,600	16,600	16,600
Retail Trade	10,900	11,200	10,300	9,600	11,200	11,200	11,200	11,200
Financial Activities	4,000	3,900	3,900	3,800	4,000	3,900	3,800	3,800
Professional and Business Services	8,300	8,200	7,900	7,700	8,600	8,500	8,200	8,300
Leisure and Hospitality	9,800	9,300	7,800	6,800	11,200	11,000	11,000	10,800
Government	17,200	17,200	16,800	16,600	19,000	19,200	18,900	18,800
Federal Government	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,400
Total State Government	5,700	5,800	5,700	5,800	6,800	7,100	6,900	7,000
Total Local Government	10,000	9,900	9,600	9,300	10,700	10,600	10,500	10,400

Figure 10: This table shows the number of nonfarm jobs by sector and sub-sector, not seasonally adjusted, according to the ESD's most recent calculations in July 2021.

According to the Washington State ESD (2021) from 2000 to 2021, nonfarm employment grew in Whatcom County from 70,000 jobs to 91,000 jobs for an annual average growth rate of 1.7%. While the COVID-19 pandemic caused major disruptions throughout the United States, Whatcom County has rebounded from an April 2020 low of 82,700 jobs (18.3% unemployment) back to 91,000 jobs (5.4% unemployment) in June

<sup>14</sup> ESD also maintains a lot of labor force data as well as county-specific data that impacts employment, much of which is used throughout this report. They also provide "labor area summaries" for each county and generate quarterly reports on the employment situation. See Whatcom's profile here: <https://www.esd.wa.gov/labormarketinfo/county-profiles/whatcom>

<sup>15</sup> Workforce Development Councils direct federal activities related to the Workforce Innovation and Opportunity Act (WIOA). Each council develops a local strategic plan centered on regional economic and workforce conditions that aligns with the goals outlined in [Talent and Prosperity for All](#), Washington State's strategic workforce plan.

2021. However, as of summer 2021, employers continue to report issues with employee retention and return to work. **Figure 10** above shows the data for jobs by industry, not seasonally adjusted for 2018-2021.

The service-providing sectors of the economy, which were some of the hardest hit by pandemic related closures, account for 73,100 of 91,000 (80%) non-agricultural jobs in June 2021 (ESD Labor Area Summaries 2021). Manufacturing provided 9,500 jobs in June 2021 compared to 10,900 jobs in June 2019.

According to Western Washington's Center for Economic and Business Research (2021, p.2), Whatcom County's top ten employers in 2020 were (in rank order with the first having the largest employee headcount): St Joseph's Hospital, the Lummi Nation, Western Washington University, Bellingham Public Schools, BP Cherry Point, the City of Bellingham, Matrix Service Inc, Ferndale School District, Whatcom County, and Haggen.<sup>16</sup>

Prior to the COVID-19 pandemic Whatcom County's average annual wage was \$49,662 in 2019, which is below the statewide annual average wage of \$69,195. In 2018, the county's median hourly wage was \$22.12, which was also lower than the state median of \$25.98 per hour (Washington Employment Security Department 2021). Wages also differ significantly by occupation. For example, though food preparation and serving related jobs are the second most likely occupation (9,560 workers) in Whatcom County, the wages workers receive in this occupation only averages \$15.73 per hour. However, the 1,430 workers in computer and math occupations receive an average hourly wage of \$39.81 (Occupational Employment Statistics 2018). It is also important to point out that when adjusted for inflation, the lowest paid 10% of jobs have had nearly stagnant wages and only grew from \$7.96/hour to \$11.71/hour in a nearly 30 year period (1990-2018) (Employment Security Department, Whatcom County Data Tables 2021).

Another important labor and employment issue in Whatcom County, which relates to its aging population (discussed above), is retirement. According to the ACS (2015-2019) data, the three industries that make up a significant portion of Whatcom County's possible retirees (workers are 55+) are healthcare, education services, and retail. As noted in the COVID-19 Community Health Impact Assessment (2021), many healthcare industries are currently experiencing labor shortages, which is contributing to delayed access to care for many people. Retail and hospitality industry leaders in Washington reported difficulty in finding workers to service providers, local government, and media starting in spring 2021 (Roberts and Vinh 2021).

## **United States-Canada Border**

The US-Canada border is a vital asset to Whatcom County and Washington State's economy.

According to the International Mobility and Trade Corridor program's 2019 data, \$53 million (USD) in trade crosses the Cascade Gateway every day, with over \$16 billion in truck trade and \$3 billion in rail trade crossing the border in 2019. In terms of volume, Blaine, WA ranked the 4<sup>th</sup> largest port-of-entry in the United States for trucks. Sumas ranked 8<sup>th</sup>, Lynden ranked 14<sup>th</sup>, and Point Roberts ranked 18<sup>th</sup>. The primarily commodities crossing the Cascade Gateway are motor vehicles, wood and wood products, and computer-related machinery and parts.

March 21, 2021 marked a full year since the US-Canada border closed due to the COVID-19 pandemic. While the border stayed open to commercial cargo and activity, passenger travel was strictly limited. Given Whatcom County's status as a border county, it receives many economic benefits to visits from Canadians, such as retail sales, sales tax revenue, as well as tourism dollars. The Border Policy Research Institute (BPRI)

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<sup>16</sup> Some numbers in this report were based on 2019 and others were estimates provided by third party sources that are likely to have been measured before the COVID-19 pandemic. Therefore, the ranking should be interpreted with caution and is likely to shift with updated data.

at WWU [evaluated the impacts on retail shopping, sales tax revenue, and tourism](#). Some of the key impacts identified were:

- Whatcom County saw a decline of 6.8 million Canadian trips between 2019 and 2020, or approximately 83% of all Canadian passenger travel entering at land ports-of-entry (Trautman 2021).
- Whatcom County is estimated to have lost \$54-65 million in retail sales just in the first and second quarters of 2020 due to COVID-19 border restrictions. Because many Canadians previously crossed to purchase gas and dairy products, two commodities not measured in taxable retail sales data, the true decrease in retail sales is likely much higher (BPRI 2020, Report 2).
- Canadian shoppers are important to Whatcom's retail sector and accounted for at least \$140 million in spending in 2018, with an average of 11.7% of taxable retail sales over time (BPRI 2020, Report 1).
- Border communities such as Blaine, Point Roberts, and Sumas were disproportionately negatively impacted by the border closure in terms of retail sales, tourism, and fuel tax revenue.

Currently the US-Canada border is scheduled to re-open to vaccinated travelers in early November 2021. Due to the ongoing uncertainties with the COVID-19 pandemic, we do not know when the border will fully reopen to all American and Canadian passenger travel. We thus suspect that negative impacts will continue to accumulate and adversely affect the region.

## **Export industries**

According to the US Department of Commerce, using data from the US Census Bureau, the Bellingham metropolitan area was the 99<sup>th</sup> largest exporter in 2019 with total goods exported totaling over \$2 billion<sup>17</sup>. The top three export sectors were petroleum and coal products (nearly \$1.1 billion) followed by processed foods (\$86.2 million), fish and other marine products (\$69.2 million). The largest markets that received exported goods were the Asia-Pacific Economic Cooperation (APEC), which is an intergovernmental forum of 21 member countries in the Pacific Rim. APEC received over \$1.9 billion in exports. The next largest markets for exports are to countries with Free Trade Agreements (FTAs) with the United States (\$1.8 billion) and North American Free Trade Agreement (NAFTA) partners (\$1.2 billion)<sup>18</sup>. This includes Canada. Countries are often members of multiple agreements and trade forums; therefore, the sum exceeds total exports.

During the COVID-19 pandemic, many industries throughout Washington and the United States reported delays, slowdowns, and losses due to Asian market closures. This is important to note because Whatcom County's fishing industry reported that they were very negatively impacted by the closures. This dependency on Asian markets resulted in a push to develop local seafood markets in Whatcom County, with the Port of Bellingham building a Fisherman's Pavilion, which will be used to support the industry in myriad ways. The Working Waterfront Coalition, Port of Bellingham, and other local partners also worked to develop the Bellingham Dockside Market, which provides a venue for the fishing industry to sell their fresh products locally.

As Whatcom County has experienced growing interest from Canadian companies even through the COVID-19 pandemic, the ability of the Port of Bellingham to establish Foreign Trade Zones could be of huge benefit to companies in the exporting business. Additionally, the Port currently works in partnership with the WWU SBDC to increase international trade and helps local firms export their products and services.

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<sup>17</sup> The Bellingham Metropolitan Statistical Area (MSA) encompasses all of Whatcom County and is a boundary that the US Census Bureau uses for some, but not all, data points.

<sup>18</sup> Trade partners are defined based upon membership status in the year of the data.

## Agriculture

According to the Census of Agriculture (2017, p. 239), Whatcom County currently has 1712 farms totaling 102,523 acres of farmland. Of the 1712 farms, 1363 farms are under 50 acres in size. The average size of is 60 acres, whereas the median size of a Whatcom farm is 12 acres. While over 102,000 acres are in use, only a little more than 86,000 acres of land exists within Whatcom County's agricultural zone, meaning that Whatcom is at least 14,000 acres below the county goal. The Agriculture Advisory Committee [identified an additional 28,000 acres of land](#) in the R5 and R10 zones that are deserving of additional protections, such as rezoning or robust enrollment in the County's Conservation Easement Program (previously the Purchase of Development Rights Program).

*Table 1: A count of farms by value of sales. Source: 2017 Census of Agriculture, Table 1, County Summary Highlights, p. 239.*

Farms by value of sales	Number of Farms
Less than \$2,500	891
\$2,500 to \$4,999	166
\$5,000 to \$9,999	146
\$10,000 to \$24,999	151
\$25,000 to \$49,999	61
\$50,000 to \$99,999	40
\$100,000+	257

In terms of sales, 257 of Whatcom's farms have sales that exceed \$100,000 annually and 40 have sales between \$50,000 and \$99,999 annually. 891 farms reported sales under \$2,500. The net cash farm income of the operations, on average per farm, is \$33,342. In addition to sales, the estimated market value of the land and buildings per farm is \$1,005,681 for an average of \$16,794 per acre. The estimated market value of machinery and equipment per farm is \$95,376 (Census of Agriculture 2017, p. 239).<sup>19</sup> According to Whatcom Family Farmers (2021) Whatcom County agricultural production has close to a \$357,312,000 market value.

## Marine Trades

The marine trades continues to be a critically important sector to Whatcom County and Washington State. Marine trades includes shipwrights, boat services and outfitters, boat sales and brokers, tour and charter companies, boating clubs, commercial fisherman, fisher buyers, fisher processors, aquaculture services, as well as transportation services such as tug and barge, ferries, cargo shipping and receiving, cold storage, and warehousing. Over 6,000 jobs in Whatcom County are created or supported by the marine trades sector, which represents approximately 7% of the total workforce (WWU CEBR 2016).

The Lummi Nation and Nooksack Indian Tribe are also critical stakeholders in the marine trades. For example, the Lummi Nation has the largest Tribal fishing fleet in the state of Washington, with approximately 600 registered Tribal fishers. Nearly every family of the Lummi Nation dependent upon fishing through either immediate or extended family. The importance of the marine trades is not only economic to the Lummi Nation and Nooksack Indian Tribe – fishing is a way of life and an integral part of their cultures. While five species of Pacific salmon reside in Whatcom watersheds, the Nooksack River spring Chinook salmon hold great cultural and subsistence importance to the Nooksack Tribe and Lummi Nation.

## Industrial Lands and Buildings

<sup>19</sup> The next US Agriculture Census will take place in 2022. Typically, there is a one to two year delay on the data release, as with the regular Census and other national-level data collection efforts that are granular.

According to the Whatcom County I-5 Corridor Study (2019, p.19), which was completed under the Port's economic development division and funded by the Whatcom County EDI program, the total number of all residential parcels and industrial parcels with a utilization ratio of under 50 percent with more than three acres is 9,941 with a total area of 20,517 acres. Of those parcels and acres, only 37 parcels of industrially zoned land totaling 256.4 acres were ranked "highly developable," whereas 335 parcels and 7,267 acres of industrial land fell into the low ranking category. High rank indicates that a parcel has utilities, road access, proximity to I-5, and few to no critical areas or wetlands. Low rank typically indicates the absence of these characteristics.<sup>20</sup>

Whatcom County also has extremely low vacancy rates for industrial buildings. According to the 2021 1<sup>st</sup> quarter Bellingham CRE Research Report, Bellingham's average industrial vacancy rate is only 0.96%, with many industrial parks and buildings having zero square feet of vacant space available. Likewise, the Port of Bellingham is the largest public industrial landowner in Whatcom County and the majority of that property is currently leased and in use.

While there are several industrial and light industrial parks in Whatcom County, the largest area of heavy industrial land can be found in the Cherry Point UGA. Cherry Point encompasses approximately 7,000 acres of heavy industrial land. Cherry Point is also a culturally important area to the Coast Salish people, including the Lummi Nation who call the area *Xwe'chi'eXen*. According to the 1855 Treaty of Point Elliot, Cherry Point is considered part of the "usual and accustomed" hunting and fishing area for the five treaty tribes (Whatcom County Comprehensive Plan 2016, Chapter 2).

Cherry Point currently contains multiple industrial facilities including two oil refineries (BP and Phillips 66) and two additional companies (Chemco and Praxair). These industrial facilities occupy approximately 5,500 acres of land, which leaves a fourth track of land that is approximately 1,500 acres that is comprised of two distinct ownerships.

Cherry Point has several existing important infrastructure features. Deep-water access off Cherry Point provides three marine transshipment terminals. BNSF Railways also serves the area. Existing industries use rail to ship and receive multiple feedstock and other products. Both of the refineries receive crude oil shipments via rail. There is extensive power, abundant liquid petroleum gas, and grey water available. It is located adjacent to the power grid and has close proximity to I-5.

## **Housing**

The United States is experiencing a housing crisis that is deepening daily. In Whatcom County, there are issues of affordability, accessibility, and availability of housing, as well as increasing housing insecurity (ability to retain safe and secure housing) and homelessness.<sup>21</sup> These problems have a direct, negative impact on Whatcom's local economy, employers, and residents.

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<sup>20</sup> The ranking is subjective and does not incorporate specific business needs, the cost of the property, or the land preparation that may be required. It is important to emphasize that the ranking is not an endorsement or condemnation of the property by FLO Analytics, the Port of Bellingham, or any other jurisdiction or entity. It is simply a tool to identify the most shovel ready properties within the study area and assess what factors may make any particular parcel easier or more difficult to develop. For a full discussion of how the rankings were created, see the Whatcom County I-5 Infrastructure Study linked in **Appendix VI.4**.

<sup>21</sup> These issues have been documented at length by the Housing Advisory Committee of Whatcom County, the Homeless Strategies Workgroup, the Whatcom County Coalition to End Homelessness, the Whatcom County Business and Commerce Advisory Committee, the Bellingham and Whatcom County Housing Authorities, and the Whatcom County Health Department, Whatcom County Planning and Development Services, City of Bellingham Planning and Community Development, as well as the Small Cities, the Lummi Nation, and Nooksack Indian Tribe Planning services, to name but a few. Numerous nonprofits, such as the Whatcom Housing Alliance, the Opportunity Council, the

Demand for single-family homes in Whatcom County continued to grow exponentially through the COVID-19 pandemic. According to Redfin (2021) in June 2021, Whatcom County home prices were up 25% compared to June 2020, selling for a median price of \$525,000. On average, homes in Whatcom County sell after six days on the market compared to 21 days last year. There were 421 homes sold in June this year, up from 326 last year (a 29% increase). Houses are even more expensive and increasingly difficult to find.

According to the Washington State Office of Financial Management's Research and Forecasting Division (2020), Whatcom had 100,302 total housing units<sup>22</sup> in 2020, which is an increase of 9,637 units from 90,665 in 2010. During the same period, the US Census Bureau estimates that Whatcom County's population grew by approximately 28,000. In their June 2019 letter to Whatcom County Council, the Whatcom County Business and Commerce Advisory committee recommended that at least 10,000 housing units must be completed (2500-3400 units per year) over the next four years (2019-2023) to reach a 4% increase in current available capacity.

### Housing Permits

Source: Whatcom County Data Tables, Employment Security Department

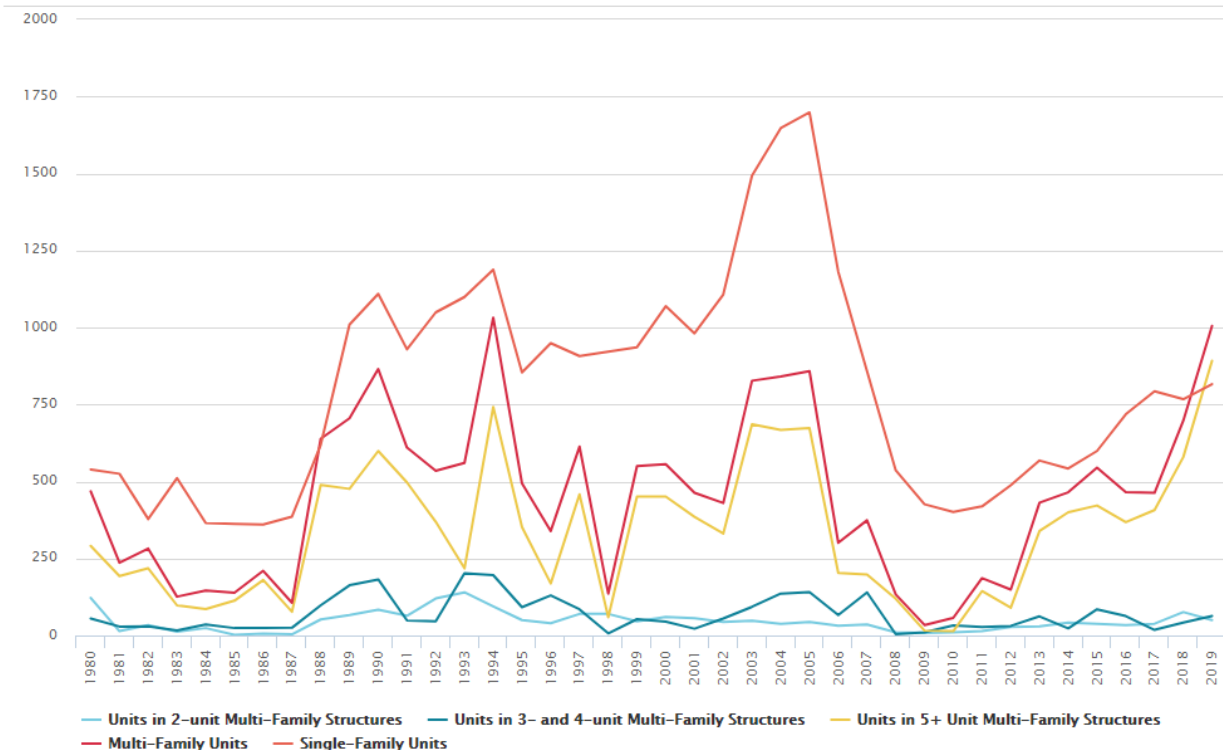


Figure 11: This table shows the number of housing permits issued in Whatcom County by the number of units per structure.

Kulshan Land Trust, the Whatcom Community Foundation, Habitat for Humanity in Whatcom County, and the Lighthouse Mission also work directly on housing related issues. Many other economic development service providers and business groups such as the Bellingham Regional Chamber of Commerce, the Downtown Bellingham Partnership, and Sustainable Connections have also advocated and worked on issues that influence small businesses such as affordable housing, worker housing, and homelessness for at least a decade. This section should therefore not be interpreted as a full analysis of every housing related issue in Whatcom County, nor a complete summary of current activities and enormous amount of work currently being done, but rather a short statistical summary of a few key points to describe the general nature of the situation.

<sup>22</sup>The Washington OFM counts mobile homes and special units, single-family homes, and two or more units housing in their data.

As **Figure 11** above illustrates, single-family homes have made up a large portion of housing permits issued in Whatcom County since 1980. Only very recently, in 2019 did the number of multifamily permits (1005) or permits for five plus units in multi-family structure (892) exceed single-family permits issued (816). The number of permits for two, three, and four unit multi-family structures has actually decreased since 1980 from 177 permits to 113 in 2019.

In addition, the rental market in Whatcom County continues to have high prices and very low vacancy rates. In spring 2021, the Washington Center for Real Estate Research at the University of Washington (2021, p. 5-6) found that rental vacancies were extremely low at 0.8% with an average rent of \$1245 per month. Whatcom County's Business and Commerce recommends an average rental vacancy rate of 4%+. This has created a highly competitive rental market, which many believe worsened during the pandemic.

Prior to the pandemic data from the ACS (2015-2019) shows that many of Whatcom's households are burdened by the cost of the housing. For example, only 37.4% of households pay less than 20 percent of their household income to housing costs. 33.2% use 30 percent or more of their income on housing costs and an astounding 11.8% of Whatcom's households pay over 50 percent of their income to housing costs. As for renters, data tables for Whatcom County from the ESD (2021) show that in 2019 51.6% of all rental households were cost-burdened (paid over 30 percent of their income to rent) and 25.7% of renters were severely cost-burdened and paid over 50 percent of their income to rent.

Cost burden is a problem for several reasons. First, high costs reduce overall housing security, putting many cost-burdened homeowners and renters at risk for homelessness. Second, cost-burden reduces the amount of consumer spending these households can engage in, reducing local spending and tax accumulation. Third, when renters are cost-burdened they will have difficulty saving for a down payment to buy their own home, which can increase long-term housing security. Finally, when combined with low vacancy rates and low housing stock, high housing prices continues to contribute to and exacerbate the worker shortage as well as employee turnover in Whatcom County.

## **Childcare**

As with affordable housing, the economy, employment, income, and poverty are deeply impacted by childcare. Access to affordable, high-quality childcare has been identified as a key impediment for many of Whatcom's households. The Whatcom County Business and Commerce Committee and Team Whatcom memberships have also repeatedly identified the childcare shortage as a problem for local businesses. The Washington State Department of Commerce (2020) found in their assessment of the industry that half a million children in Washington do not have access to licensed childcare. The nature of this problem affects residents of all income levels.

For low-income families, affordable quality childcare is in short supply. Childcare is one of the largest expenses for Asset Limited, Income Constrained, Employed (ALICE) families. If families are not eligible for a subsidy, the United Way (2020) finds that nearly 30% of their budget goes to childcare expense. The U.S. Department of Health and Human Services recommends no more than 7% of household income be spent on childcare for low-income families (Smith et al. 2020). Therefore, many households may have at least one adult exit the labor market to fulfill childcare duties. As women still earn less than men, on average, women are more likely to exit the labor market, which means that inadequate childcare exacerbates worker shortages and gender inequalities. This group is also most likely to be in a household that is cost-burdened or severely cost-burdened already by housing. These families often therefore must make difficult and sometimes impossible choices between food, housing, childcare, and healthcare.

Childcare is also a problem for dual earner households, as the expense is high and the wait lists are long. According to the Child Care Aware and the Opportunity Council (2019, p.8) one year of early child care for

an infant, toddler, or pre-schooler in Whatcom County is more expensive than annual tuition plus books at Western Washington University or Whatcom Community College.

In June 2021, there were 2,733 early childcare spots available in Whatcom County. WWU's CEBR (2021) has estimated that by 2025, Whatcom County will need 5,768 childcare spots for a total demand of 8,501 early learning spots. While childcare availability and affordability were major concerns of businesses and households in Whatcom County prior to the COVID-19 pandemic, during the pandemic the situation worsened significantly. Ten Whatcom County licensed care providers closed permanently and there are not enough qualified childcare staff to meet current or anticipated future needs. This labor shortage stems from the combination of high credentialing requirements and low levels of compensation (wages and benefits) (Whatcom County COVID-19 Community Health Impact Assessment 2021).

## II. SWOT Analyses

### 1. Regional SWOT Analyses

The economic development division at the Port of Bellingham conducted multiple SWOT analyses via stakeholder engagement. SWOT analyses are typically used as an assessment tool for strategic planning and a required component of a CEDS per the EDA content guidelines.

SWOT analyses were completed for city, county, and port jurisdictions and industries. Industry SWOTs for fourteen industries were also developed for Whatcom County via stakeholder engagement with local government staff, elected officials, the private sector, such as the Whatcom County Business and Commerce Committee, Team Whatcom members, and other stakeholders. Due to space limitations, the Port of Bellingham, seven city SWOT analyses, and industry SWOT analyses are in **Appendix VI.2 and VI.3** and on the website. A list of key stakeholders solicited for engagement in the process are in **Appendix VI.2**.

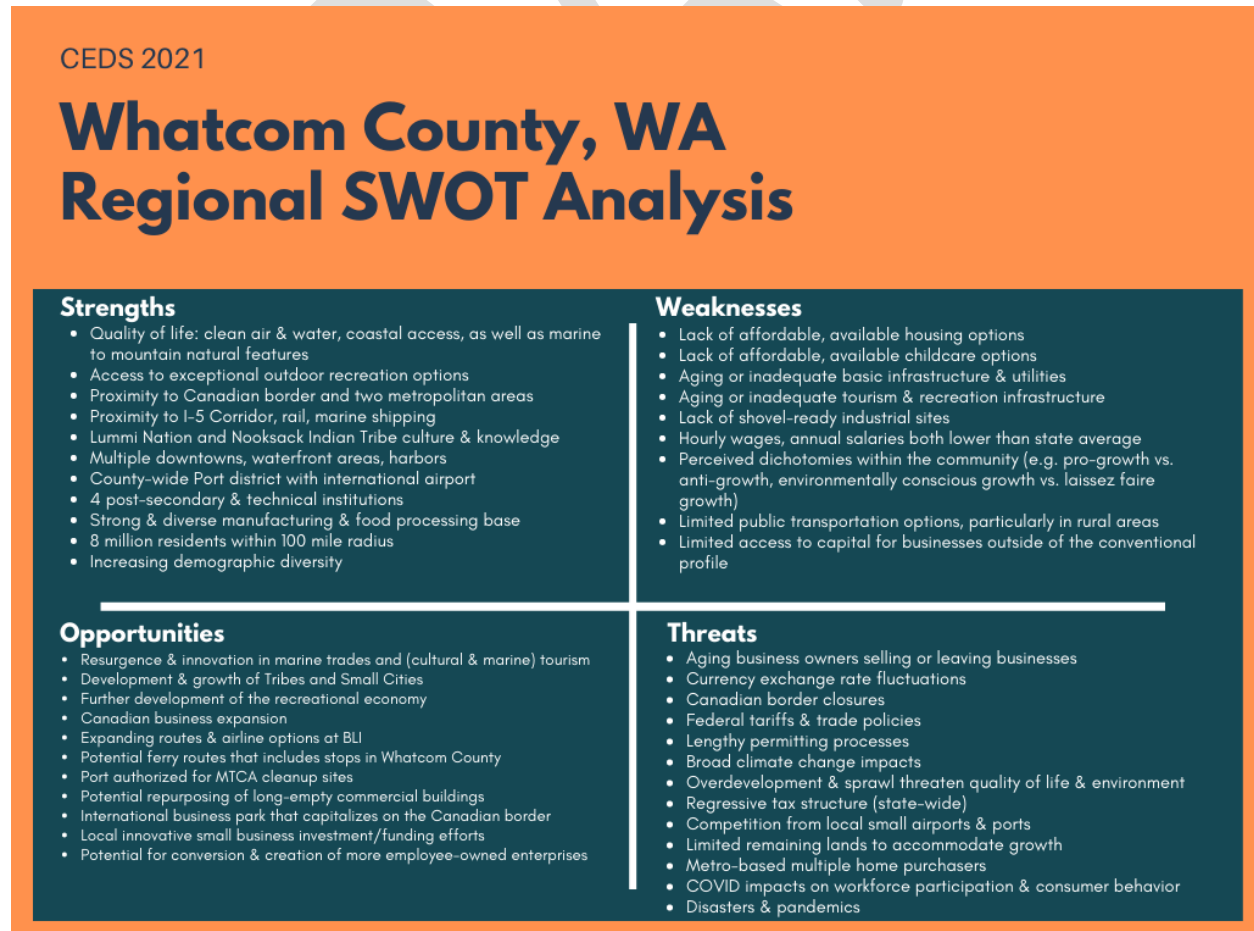


Figure 12: A Regional SWOT Analysis for Whatcom County, WA.

The results of the SWOT analyses for the county, the seven incorporated cities, and select industries helped guide the identification of regional economic development priorities as well as the resulting goals, objectives, and strategies and work plan.

As **Figure 12** above demonstrates, there are several countywide challenges, including affordable, available housing and childcare options, aging or inadequate infrastructure and utilities, as well as a lack of available shovel-ready industrial sites. Additionally, many of these conditions, as well as the fact that hourly wages and annual salaries in Whatcom County continue to be below the Washington state average, have exacerbated the current labor shortage. These challenges were also consistently identified in the industry SWOTs, which were completed with stakeholder engagement of the Whatcom County Business and Commerce Committee, Team Whatcom members, as well as other actors in public, private, and nonprofit sectors.

There are also many opportunities in Whatcom County. Commonly identified among many stakeholder groups was the resurgence and innovation occurring in maritime, tourism, and recreation industries. Others also believed economic development efforts with the Small Cities, the Lummi Nation, and the Nooksack Indian Tribe, presented some of the biggest prospects for growth. Canadian business expansion, developing shovel ready sites in international business parks, new Shipping Terminal business, as well as expanding routes and airline options from Bellingham International Airport were also acknowledged as promising economic prospects for Whatcom County.

## **2. Priorities**

Drawing on the jurisdictional SWOT analyses, the industry-level SWOT analyses, as well as stakeholder engagement, there are several high priority issues that are currently affecting Whatcom County's ability to grow economically:

### **Social and economic infrastructure**

- Housing availability and affordability
- Childcare availability and affordability
- Labor shortage
- Wages inconsistent with cost of living

### **Physical infrastructure**

- Lack of or insufficient utilities, including electric, sewer, water, broadband
- Substantial wetlands and critical areas with limited wetland mitigation bank credits

The recent COVID-19 Community Health Impact Assessment completed by the Whatcom County Health Department also found that housing, childcare, and the labor shortage problems were major issues before, during, and after the pandemic. To this priority list, they add other components of social and economic infrastructure:

- Mental health and crisis intervention
- Kindergarten readiness

Finally, other issues that were severely impacted by COVID-19 include food security and domestic violence. While these issues are primarily outside of the authority of the economic development division at the Port, it is important to recognize that they have short and long-term implications for development and growth in Whatcom County.

In addition to physical and social infrastructure, the other two areas in which stakeholders consistently expressed concern or priority were related to environmental sustainability, climate change impacts, as well as issues related to diversity, equity, and inclusion.

The Action Plan represents these priorities.

### III. Action Plan

#### 1. Vision

The economic development division at the Port of Bellingham envisions “a resilient regional economy that has: a dynamic and inclusive business community, a commitment to living wage jobs and equity, and the physical, social, and economic infrastructure to support it.”

#### 2. Goals and Objectives

Drawing on the SWOT analyses, regional priorities outlined in other strategies, plans and reports, immense stakeholder engagement, as well as a thorough review of CEDS and economic development best practices, below are the goals (numbered) and objectives (bullets).

Please note that goals and objectives **are not in rank order** and **numbering or ordering should not be interpreted as implying priority**. Every goal and objective is important.

##### 1. Build upon and strengthen Whatcom County's economic base<sup>23</sup>.

- **Cultivate a business friendly environment** – Promote and support local governments in creating responsive, helpful, and expedient services that promote Whatcom County as a great place to do business.
- **Business retention and expansion (BR&E)** – Continue to work with and provide resources to Whatcom's advanced manufacturing and professional services sectors. This creates living wage jobs, increase the local tax base and supports our high quality of life.
- **Small business support** – Support the small businesses in Whatcom County that provide both entry level and family wage jobs.
- **Economic diversification and recruitment** – Research and identify current and future sectors showing the greatest potential for growth. Work to recruit businesses in those sectors.
- **Shovel ready sites** – Support partners in sustainably developing existing industrially zoned lands to have graded parcels with basic utility, road, and transport access.
- **Industrial building supply** – Work with partners to create a diverse industrial building supply in Whatcom County.
- **Entrepreneurship and sole proprietorship** – Continue to engage with Whatcom County's many entrepreneurs and sole proprietors and our partners who work with them.
- **Innovation, technological and value-added upgrading** – Support and promote innovation, technological advances, and value-added processing/products across all sectors, but especially in advanced manufacturing, agriculture, energy, forestry, marine trades, and recreation.
- **Rural economic development** – Continue to promote and support economic development in rural areas of Whatcom County, support rural entrepreneurs, and advance rural economic recovery efforts.

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<sup>23</sup> The term economic base typically refers to companies and employers that generate wealth and bring income in from outside, such as exporting industries. Certain types of service industries, such as retail, often support these industries. Given the nature of Whatcom County's economic ecosystem it also makes sense for the division to focus on tradeable sectors as there are multiple other actors who service the retail sector in Whatcom County, such as the Bellingham Regional Chamber of Commerce as well as the Small City and unincorporated local area chambers, Downtown Bellingham Partnership and other downtown associations, Sustainable Connections, and the WWU SBDC, to name but a few.

- **Local jurisdiction development** – Support, promote, and assist economic development planning as well as business recruitment, retention, and expansion efforts with local jurisdictions per their request and preference. This includes but is not limited to the Small Cities, the Lummi Nation, the Nooksack Indian Tribe, as well as the rural and unincorporated parts of Whatcom County.
  - **Waterfront redevelopment** – Continue to support the Port of Bellingham and the City of Bellingham's [Waterfront Redevelopment](#) efforts per their request and preference.
  - **Environmental stewardship** – Promote and support businesses and policies that protect and enhance our natural environment and increase resiliency.
  - **Affordable and available housing** – Work with local jurisdictions and service providers to inform and assist with the development of affordable and available housing choices for all income levels in Whatcom County.
  - **Affordable and available childcare** – Promote and support affordable and available quality childcare choices for all income levels in Whatcom County.
  - **Financially literate generalists** - Work with partner organizations to ensure that residents and businesses have a basic understanding of the workings of a healthy community, including the role of economic developers, the relationship between business and communities, as well as financial literacy.
2. **Develop and enhance critical infrastructure that promotes economic development and resiliency.**
- **Strategic utility investments** – Promote efficient and resilient utility development and expansion that supports that region's business and economic development needs.
  - **Communications infrastructure** – Promote planning and deployment of broadband infrastructure and increase access and quality to unserved and underserved communities, businesses, workforce, educators, and students.
  - **Efficient and renewable energy and low cost power** – Promote energy infrastructure to stabilize or reduce the long-term cost of power by increasing energy efficiency. Promote and support updating and modernization of our grid, as well as infrastructure that supplies low-cost power and renewable forms of energy.
  - **Transportation infrastructure investments** – Support transportation partners and investments in multi-modal forms of transportation, with a focus on improvements and transit that reduces vehicle miles traveled, improves public transit, and promotes active transportation. Assist airport staff with growing business connections flown to/from Bellingham International Airport.
  - **Countywide wetland mitigation banks** – Continue to support the development of public and private wetland mitigation bank(s) throughout Whatcom County, which are a necessity for all future infrastructure development.
  - **Healthcare infrastructure investments** – Explore opportunities for generating additional and varied healthcare services and facilities, including Tribal Health Clinics, throughout Whatcom County, with a focus on underserved and unserved communities.
3. **Develop a skilled workforce, expand educational attainment, and align employer needs with educational programs and curriculum.**
- **Skills alignment and information sharing** – Inform workforce development partners about skills gaps identified through BR&E work completed in the county. Assist with the development and alignment of skills programs that match the needs of local employers and provides workers a living wage.

- **STEM program improvements** – Promote and partner with post-secondary education, nonprofits, and the private sector in order to increase the number of students in local STEM programs, internships, and jobs.
  - **Educational attainment improvements** – Work with partner organizations and school districts to ensure as many Whatcom County high school students graduate as possible.
  - **Retention of local talent** – Work with partners to ensure that as many post-secondary graduates and highly experienced workers remain in Whatcom County as possible.
  - **Post-secondary education expansion** – Work with partners to fulfill strategic business and economic education needs. Support partners in their efforts to achieve Washington State [Path to 70%](#) of the population having some post-secondary credentials by 2030.
  - **Work-based education and training** – Support partners and businesses in providing paid opportunities for work-based education, including but not limited to paid apprenticeships, internships, placement opportunities, and on-the-job training programs.
4. **Create a dynamic relationship between Whatcom County and Lower British Columbia, Skagit, Island, and San Juan Counties.**
- **Create awareness** – Promote and market economic opportunities, as well as the myriad natural beauty and recreational opportunities, in Whatcom County with data that supports continued responsible investment in the region.
  - **Relationship building** – Develop relationships with regional economic development agencies and neighboring associate development organizations (ADOS) in Skagit, Island, and San Juan Counties.
  - **Border thinning** – Promote and support the strategic efforts of the International Mobility Trade Corridor Program (IMTC), including but not limited to working towards an open US-Canadian border with short wait times and increased use of Trusted Traveler Programs.
  - **Cross border relations** – Promote coordination between Whatcom County and British Columbia and develop strategic relationships with public and private Canadian partners.
5. **Cultivate an economy that values diversity, equity, and inclusion for all.**
- **DEI in BR&E work** – Support and promote increased diversity, equity, and inclusion (DEI) in BR&E efforts throughout Whatcom County.
  - **Equal and fair access to resources and services** – Promote and support equal and fair access to quality public, private, and nonprofit resources and services for all residents and businesses in Whatcom County.
  - **Uplift excluded groups and businesses** – Support and promote inclusion in regional economic development efforts as well as equity for all historically and geographically excluded groups and businesses in Whatcom County.
  - **DEI metrics** – Identify and develop DEI metrics that are relevant and important for economic development entities to track, collect, and analyze.
  - **Safe Spaces** – Work with public, private, and nonprofit partners to create safe and welcoming spaces for all types of businesses, workers, customers, and visitors.
6. **Support countywide economic resiliency and recovery efforts.**
- **Connect businesses to disaster tools and experts** – Promote, support, and market local, state, and federal emergency management efforts to provide businesses, government, and nonprofits with disaster preparedness and climate resilience resources and tools.
  - **Continuity of government** – Advocate for the support of local governments in their recovery efforts from disasters and in preparation for climate resilience.

- **Economic and business relief and recovery funding** – Advocate for relief and recovery dollars for businesses, communities, and households and support that redevelopment efforts are resilient.
- **Documentation and data** – Support partner and business efforts to accurately document disaster-related business losses.
- **Resiliency and mitigation** – Promote and support public and private partner efforts related to resiliency, mitigation, and climate change, as it relates to economic and business development.
- **Economic recovery planning** – Participate in and support regional partner efforts geared towards economic recovery from disasters.

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### 3. Strategy Implementation and Deliverables

Goal 1: Base Economy Strategies	Milestones/Deliverables	Stakeholders/Collaborators	Timeline
1. Continue to promote and support the base economy (traded sectors and professional services) that Whatcom County has a competitive advantage in including but not limited to advanced manufacturing, value-added agriculture, construction, healthcare, energy, marine trades, recreation, and technology.	<ol style="list-style-type: none"> <li>1. Meet with local firms, existing and new, that comprise the base economy to provide tools and resources that will assist in their success. <ol style="list-style-type: none"> <li>a. Identify worker shortages and skills gaps.</li> <li>b. Learn about plans for expansion or contraction as well as any merger and acquisition activity.</li> <li>c. Explore issues of financing, permitting, exporting, and real estate needs.</li> </ol> </li> <li>2. Support infrastructure development and the creation of shovel-ready commercial and industrial properties.</li> <li>3. Meet with appropriate Port of Bellingham divisions, Whatcom County, seven cities, and Team Whatcom partners to regularly to identify and assist with business expansion and recruitment efforts.</li> </ol>	Port of Bellingham, Whatcom County, City of Bellingham, Small Cities, the Lummi Nation, the Nooksack Indian Tribe, WWU SBDC, the Downtown Bellingham Partnership, the Bellingham Regional Chamber of Commerce, Birch Bay Chamber of Commerce, Blaine Chamber of Commerce, Ferndale Chamber of Commerce, Lynden Chamber of Commerce, Nooksack Everson Chamber of Commerce, Sumas Chamber of Commerce, and the Mount Baker Chamber of Commerce, Sustainable Connections, NWIRC, TAGNW, Lummi Indian Business Council, Sustainable Connections, Whatcom Business Alliance	Ongoing & long-term
2. Support and promote innovative value-added agriculture businesses and practices that have the potential to increase value-added production, increase food security, and increase resiliency of businesses and the industries.	<ol style="list-style-type: none"> <li>1. Support the <a href="#">Northwest Agricultural Business Center</a> and explore potential programs and projects for collaboration.</li> <li>2. Support and promote the farm and sea to table models, such as the <a href="#">Eat Local First campaign</a> for Whatcom County and Washington State.</li> <li>3. Support the Whatcom Community Foundation's <a href="#">Millworks</a> local food campus and other <a href="#">food security</a> programs.</li> </ol>	Agriculture sector, the Lummi Nation, the Nooksack Indian Tribe, City of Bellingham, Port of Bellingham, the Small Cities, Whatcom County, Sustainable Connections, Bellingham Whatcom Tourism, the Bellingham Dockside Market, Whatcom Working Waterfront Coalition, Whatcom Community Foundation, WWU SBDC	Ongoing & long-term
3. Support innovative maritime industries and projects that have the potential to increase value-added manufacturing and fisheries and/or create new or improved infrastructure and transportation benefits to the community.	<ol style="list-style-type: none"> <li>1. Support the Port of Bellingham and the Maritime Blue Joint Innovation Project to manufacture hydrofoil ferries on the Bellingham Waterfront.</li> <li>2. Support the Port of Bellingham, Maritime Blue, and the private sector to explore the options for a <a href="#">passenger ferry</a> or a mosquito fleet with multiple stops between Bellingham and other destinations.</li> <li>3. Explore opportunities for a small, low-impact cruise ship company, as well as the funding opportunities for infrastructure necessary to accommodate such a vessel, to include Bellingham as a stop in their Puget Sound itinerary.</li> </ol>	Port of Bellingham, Maritime Blue, Working Waterfront Coalition, Sustainable Connections, Bellingham Whatcom County Tourism, WWU SBDC, the Lummi Nation, the Nooksack Indian Tribe, private sector	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

4. Support the growth of the local technology sector.	<ol style="list-style-type: none"> <li>1. Meet with technology firms to learn about and support their needs for growth. Relay needs to appropriate education providers.</li> <li>2. Continue to support innovate technology programs in Whatcom County, such as BTC's Cybersecurity program, WCC's new computer science program, and WWU's clean energy institute.</li> <li>3. Research and reach out to firms that possess technology expertise not currently in the region.</li> </ol>	Western Washington University, Whatcom Community College, Bellingham Technical College, Northwest Indian College, tagNW, WWU SBDC, private sector	Ongoing & long-term
5. Support innovative recreation industries and projects that have the potential to increase sustainable tourism, value-added manufacturing, and/or create new or improved infrastructure and transportation benefits to the community.	<ol style="list-style-type: none"> <li>1. Support and promote the manufacturing of innovative mountain and road bikes, the culture of biking, and local biking infrastructure throughout Whatcom County.</li> <li>2. Support and promote improved infrastructure and facilities at recreational locations, such as trailheads and human powered boat entry points, including increased availability of restrooms, potable water, and trash receptacles.</li> <li>3. Explore options to complete an economic impact study for the recreation sector.</li> <li>4. Support the development of the Regional Trails Plan to connect the Small Cities and Bellingham with surrounding communities, ecosystems, and recreational opportunities.</li> <li>5. Support and promote the <a href="#">Whatcom Water Trails map</a> and the Whatcom Water Trails program for tourism and recreation purposes.</li> <li>6. Support and promote the Port of Bellingham's Waterfront Pump Track and mountain biking events, such as Northwest Tune Up.</li> <li>7. Work with partners to explore options for improved water access along the Nooksack River, Salish Sea coast, and around Whatcom County lakes for recreational users.</li> <li>8. Support the implementation of Tourism's county-wide Wayfinding project.</li> </ol>	Port of Bellingham, Small Cities, City of Bellingham, Whatcom County, the Lummi Nation, the Nooksack Indian Tribe, Parks and Recreation Commission, Working Waterfront Coalition, Recreation Northwest, Whatcom County Mountain Bike Coalition, WWU SBDC, Bellingham Whatcom County Tourism, private sector	Ongoing & long-term
6. Support and promote economic development service providers and nonprofits that work with, support, or advocate for small businesses, rural entrepreneurs, and sole proprietors in Whatcom County.	<ol style="list-style-type: none"> <li>1. Continue to host regular Team Whatcom meetings.</li> <li>2. Continue to support and promote the Choose Whatcom website.</li> <li>3. Explore options for updating the Choose Whatcom website.</li> </ol>	Downtown Bellingham Partnership, the Bellingham Regional Chamber of Commerce, Birch Bay Chamber of Commerce, Blaine Chamber of Commerce, Ferndale Chamber of Commerce, Lynden	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

	4. Work with partners to identify additional modes of support for their work.	Chamber of Commerce, Nooksack Everson Chamber of Commerce, Sumas Chamber of Commerce, and the Mount Baker Chamber of Commerce, Sustainable Connections, NWIRC, TAGNW, Lummi Indian Business Council, Sustainable Connections, Whatcom Business Alliance	
7. Support and promote economic development technical assistance providers in Whatcom County.	1. Continue to support and promote the work of the WWU SBDC. 2. Continue to refer small business clients to the WWU SBDC for technical assistance (access to financing, financial forecasting, startup assistance, export assistance, HR assistance, etc.)	Port of Bellingham, WWU SBDC	Ongoing & long-term
8. Promote and support immediate solutions to the housing crisis.	1. Support and promote the urgent need for affordable housing for workers, in areas near services, throughout Whatcom County. 2. Support efforts to address houselessness issues throughout Whatcom County. 3. Support and advocate for local businesses impacted by the housing crises. 4. Support and promote a diverse array of housing solutions, housing choice, and affordable housing types that address the housing crisis. 5. Support housing development and modular construction companies that develop innovative and environmentally sustainable housing solutions. 6. Support increased mixed-use zoning in order to encourage different housing choices and creating different yet sustainable and innovative live-work spaces. 7. Support nonprofits that work on innovative housing solutions. 8. Participate on boards and committees working to address the housing crisis. 9. Collaborate with the Whatcom Housing Alliance to conduct a workforce housing feasibility study.	Port of Bellingham, Whatcom County, City of Bellingham, Small Cities, the Lummi Nation, the Nooksack Indian Tribe, Whatcom Housing Alliance, the Whatcom County Business and Commerce Committee, Habitat for Humanity, the Housing Advisory Committee of Whatcom County, Kulshan Community Land Trust, Whatcom Community Foundation	Ongoing & long-term
9. Promote and support economically sustainable and environmentally low impact business practices whenever possible in BR&E work.	1. Promote providing workers with a living wage, investment in worker housing options, and on-site and off-site childcare facilities. 2. Support partners that work directly with childcare providers and organizations to increase childcare	Sustainable Connections, Whatcom Community Foundation, City of Bellingham, Port of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Bellingham Regional Chamber of	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

	<p>access and affordability for families at all income levels.</p> <ol style="list-style-type: none"> <li>3. Support, collaborate with, and promote business organizations that offer succession planning, employee ownership options (e.g. Employee Stock Ownership Programs, cooperatives, etc.), and similar business succession and retirement programs to preserve jobs, local ownership, and civic engagement.</li> <li>4. Support formation of Washington State Center for Employee Ownership, led by the Whatcom Community Foundation.</li> <li>5. Refer companies converting to employee ownership to the WWU SBDC.</li> <li>6. Support and promote existing businesses that offer waste reduction, composting, and recycling services and work with partners to recruit businesses that provide recycling and waste reduction services not currently found in Whatcom County.</li> <li>7. Support and promote food and restaurant waste reduction via Sustainable Connection's <a href="#">Food Recovery Program</a> and <a href="#">Toward Zero Waste</a> program.</li> </ol>	Commerce, Whatcom County, WWU SBDC, Team Whatcom members	
10. Support and promote partners in their climate planning processes, programs, and policies, particularly those that increase economic resiliency.	<ol style="list-style-type: none"> <li>1. Promote and support programs and funding for energy efficiency improvements and alternative energy throughout Whatcom County, particularly within agriculture and small businesses.</li> <li>2. Support and assist as requested on climate action planning and programming.</li> <li>3. Support port and county-wide mitigation and resiliency efforts.</li> </ol>	Whatcom County Climate Planning Steering Committee, Port of Bellingham Climate Resiliency and Mitigation team, Port of Bellingham, Small Cities, Whatcom County, Whatcom County Climate Impact Committee, the Lummi Nation, and the Nooksack Indian Tribe, private sector, nonprofit sector	Ongoing & long-term
11. Promote the usage of existing opportunities and tools for investment.	<ol style="list-style-type: none"> <li>1. Promote the use of federally identified <a href="#">Opportunity Zones</a>, currently located in <a href="#">Bellingham</a> and the <a href="#">Lummi Nation Reservation</a>.</li> <li>2. Promote the use of the Port of Bellingham's Foreign Trade Zone #129.</li> </ol>	Washington State Department of Commerce, the Washington Economic Development Association, Whatcom County, Port of Bellingham, City of Bellingham, Small Cities, the Lummi Nation, the Lummi Indian Business Council, the Nooksack Indian Tribe, WWU SBDC, the Whatcom Community Foundation, Team Whatcom members, private sector	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

12. Support partner activities to develop local markets.	<ol style="list-style-type: none"> <li>1. Support and partner with organizations that prioritize strategic city centers, downtowns, and front facing businesses, throughout Whatcom County.</li> <li>2. Support and promote the development of local markets for consumer products, such as the <a href="#">Think Local First</a> campaign and the Bellingham Dockside Market, in Whatcom County.</li> </ol>	Port of Bellingham, the Bellingham Dockside Market, Bellingham Seafood, the Marine Life Center, Tribal fishers, Whatcom Water Trails Program, Sustainable Connections, Bellingham Whatcom County Tourism, Downtown Bellingham Partnership, the Bellingham Whatcom County Regional Chamber of Commerce, the Fairhaven Association, the Ferndale Downtown Association, the Ferndale Chamber of Commerce, the Downtown Lynden Association, the Blaine Chamber of Commerce, and the Mount Baker Foothills Chamber of Commerce, Whatcom Community Foundation, Team Whatcom members, private sector	Ongoing & mid-term
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<b>Goal 2: Infrastructure Strategies</b>	<b>Milestones/ Deliverables</b>	<b>Stakeholders/Collaborators</b>	<b>Timeline</b>
1. Support and promote partners that work on transportation and utility improvements and development.	<ol style="list-style-type: none"> <li>1. Support the County and PUD #1 in developing infrastructure for the Cherry Point UGA.</li> <li>2. Partner and collaborate with WCOG regarding transportation development and improvements, including implementation of the Regional Trail Plan.</li> <li>3. Participate in Cascadia Innovation Corridor workgroup.</li> <li>4. Promote, maintain, and expand I-5 Infrastructure and Utility GIS database to all of Whatcom County.</li> </ol>	Port of Bellingham, Bellingham International Airport, Whatcom Transportation Authority, Whatcom Council of Governments, Whatcom County, Whatcom County EDI Board, Whatcom County Health Department, City of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Public Utility District #1, Birch Bay Waters and Sewer District, Lake Whatcom Water and Sewer District, Bellingham Whatcom County Tourism, Team Whatcom members, Cascadia Innovation Corridor workgroup, private sector	Ongoing & long-term
2. Support enhanced coordination and expedited, sustainable, and business friendly processes for county-wide planning and permitting.	<ol style="list-style-type: none"> <li>1. Continue to regularly attend the City/County Planners Workgroup monthly meetings.</li> <li>2. Continue to build relationships with county and city planning and public works departments and staff.</li> <li>3. Work with appropriate agencies throughout the county to address permitting issues for businesses as they come up.</li> </ol>	Port of Bellingham, Whatcom Transportation Authority, Whatcom Council of Governments, Whatcom County, City of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Public Utility District #1, Planning Commission, Whatcom County Emergency Management	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

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	<ol style="list-style-type: none"> <li>Continue to attend the City of Bellingham's Broadband Advisory Committee.</li> <li>Work with the Whatcom County Business and Commerce Committee to improve business processes.</li> </ol>		
<ol style="list-style-type: none"> <li>Work with partners to develop and support infrastructure construction, including broadband, and funding opportunities.</li> </ol>	<ol style="list-style-type: none"> <li>Work with partners to establish wetland mitigation banks with sufficient credits as soon as possible.</li> <li>Work with partners to identify an infrastructure project with regional impact to be considered for an LID.</li> <li>Review and update the EDI program policies in order to maximize impact and efficiencies regionally.</li> <li>Work with local jurisdictions to maximize their use of both CEDS Project List and EDI funding.</li> <li>Explore opportunities for public-private partnerships (P3) with the local telecommunication providers to develop, construct, and maintain infrastructure.</li> <li>Explore new and emerging telecommunications technologies, such as satellite.</li> <li>Continue to development Broadband Strategy and Action Plan.</li> <li>Continue to participate on the Washington Public Ports Association Broadband sub-committee on broadband policies.</li> </ol>	Port of Bellingham, Whatcom Council of Governments, Whatcom County, City of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Public Utility District #1, Whatcom County Emergency Management, private internet service providers (ISPs), Washington State Broadband office, private sector	Ongoing & long-term

<b>Goal 3: Workforce Strategies</b>	<b>Milestones/Deliverables</b>	<b>Stakeholders/Collaborators</b>	<b>Timeline</b>
<ol style="list-style-type: none"> <li>Support and promote workforce development partners and their strategic plans.</li> </ol>	<ol style="list-style-type: none"> <li>Participate in the Northwest Workforce Council's quarterly board meetings.</li> </ol>	Northwest Workforce Council	Ongoing & long-term
<ol style="list-style-type: none"> <li>Identify skills employers need to remain competitive and connect them to partners that can help them to retain and upskill existing employees.</li> </ol>	<ol style="list-style-type: none"> <li>Conduct business retention and expansion visits on a regular basis with local business community, which includes a discussion on workforce needs.</li> <li>Share identified needs with appropriate education and resource providers.</li> <li>Continue to participate on the Workforce Training and Retraining Advisory Group committee at Whatcom Community College.</li> </ol>	Northwest Workforce Council, WWU SBDC, Team Whatcom members, Western Washington University, Bellingham Technical College, Northwest Indian College, Whatcom Community College, K-12 school districts, Whatcom County Business and Commerce Committee, private sector	Long-term
<ol style="list-style-type: none"> <li>Create pathways from STEM to the workforce.</li> </ol>	<ol style="list-style-type: none"> <li>Collaborate with partners to promote and create holistic education programs that include science,</li> </ol>	Technology Alliance Group Northwest's <a href="#">Whatcom STEM</a> program, <a href="#">Northwest</a>	Ongoing & long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

	<p>technology, engineering, arts education, and math (STEM).</p> <p>2. Continue to participate on the Whatcom STEM Planning Advisory Committee.</p>	<p><a href="#">Washington STEM Network</a>, Bellingham Technical College, Whatcom Community College, Western Washington University, Northwest Indian College, and our K-12 school districts, NW Educational Service District 189 (NWESD189), Career Connect WA, Team Whatcom members, private sector</p>	
<p>4. Support youth development programs via partners to promote employment and skills development and training for young adults and other unserved and underserved groups.</p>	<p>1. Support and promote the Whatcom Business Alliance's Youth Engagement Initiative, also called YES Whatcom.</p> <p>2. Explore programs and support and promote local organizations that provide options and support for the re-entry of formerly incarcerated people into the workforce.</p>	<p>NW Educational Service District 189 (NWESD189), Technology Alliance Group Northwest, Bellingham Technical College, Whatcom Community College, Northwest Indian College, Western Washington University, Career Connect WA, Whatcom Business Alliance, Workforce Training and Retraining Advisory Group, Team Whatcom members, Northwest Youth Services, private sector</p>	Ongoing & long-term
<p>5. Coordinate with sector specific departments and programs within Bellingham Technical College, Whatcom Community College, Northwest Indian College, Western Washington University to provide connection to local workforce needs.</p>	<p>1. Share information learned from BR&amp;E work with partners.</p> <p>2. Continue to participate in the Western Crossing workgroup and make connections between BR&amp;E and local talent pipelines.</p>	<p>Northwest Workforce Council, Bellingham Technical College, Whatcom Community College, Northwest Indian College, Western Washington University</p>	Ongoing & long-term
<p>6. Support efforts by regional public and private partners, post-secondary education institutions, and employers to retain post-secondary graduates in Whatcom County.</p>	<p>1. Work to develop higher paying competitive jobs that will attract local talent to stay in Whatcom County.</p>	<p>Port of Bellingham, Whatcom Council of Governments, Whatcom County, City of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Northwest Workforce Council, Bellingham Technical College, Whatcom Community College, Northwest Indian College, Western Washington University</p>	Ongoing & long-term

<b>Goal 4: Regional Partners Strategies</b>	<b>Milestones/Deliverables</b>	<b>Stakeholders/Collaborators</b>	<b>Timeline</b>
<p>1. Develop a strategy to collaborate with Canadian companies with goal of expanding to Whatcom County.</p>	<p>1. Market the opportunity to establish Foreign Trade Zones in Whatcom County.</p> <p>2. Work with international commercial real estate firms to provide investment opportunities for expansion in Whatcom County.</p>	<p>Port of Bellingham, Whatcom County, City of Bellingham, Small Cities, Team Whatcom members, private sector</p>	Long-term

# **Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

	<ol style="list-style-type: none"> <li>Support the maintenance and use of Whatcom Prospector.</li> <li>Advocate for and promote existing international business parks with shovel ready sites.</li> </ol>		
2. Support and promote the work of partners who work directly on US-Canada relations and cross border issues.	<ol style="list-style-type: none"> <li>Continue to be a Steering Committee Member of the International Trade and Mobility Corridor group.</li> <li>Support and promote WWU's Border Policy Research Institute.</li> <li>Support and promote partner participation in transboundary conservation projects.</li> </ol>	Whatcom Council of Governments, the International Trade and Mobility Corridor Program, WWU's Border Policy Research Institute, Cascadia Innovation Corridor, Cascadia Partner Forum, Whatcom County	Ongoing & long-term
3. Work with border communities and cities in Whatcom County, such as Birch Bay, Blaine, Lynden, the Nooksack Valley, Point Roberts, and Sumas, on US-Canada border issues and economic development opportunities.	<ol style="list-style-type: none"> <li>Explore opportunities, upon community request, for economic diversification and improved infrastructure to reduce dependence on the US-Canada land border.</li> </ol>	Whatcom County, City of Bellingham, Small Cities, Lummi Nation, Nooksack Indian Tribe, Birch Bay, Point Roberts, Mount Baker Chamber, Birch Bay Chamber, Blaine Chamber, Lynden Chamber, Sumas Chamber, Nooksack-Everson Chamber	Ongoing & long-term
4. Identify opportunities for collaboration and partnership with neighboring Washington county ADOs and economic development councils.	<ol style="list-style-type: none"> <li>Establish regular annual meetings with the Economic Development Agency of Skagit County, the San Juan Economic Development Council, and Island County Economic Development Council.</li> <li>Re-establish regular meetings with EDASC.</li> </ol>	Economic Development Agency of Skagit County, the San Juan Economic Development Council, and Island County Economic Development Council	Ongoing & short-term
5. Continue to develop relationships with Canadian economic development partners.	<ol style="list-style-type: none"> <li>Continue to participate in the Surrey Board of Trade.</li> <li>Identify opportunities for collaboration and partnership with the City of Surrey's Economic Development Department.</li> <li>Explore options and introduce ADO team members and Whatcom County to additional City Economic Development Departments in Lower Mainland British Columbia.</li> </ol>	Surrey Board of Trade, City of Surrey Economic Development, City Economic Development Departments in Lower Mainland British Columbia	Ongoing & long-term

<b>Goal 5: DEI Strategies</b>	<b>Milestones/Deliverables</b>	<b>Stakeholders/Collaborators</b>	<b>Timeline</b>
1. Coordinate with partners to improve economic development opportunities, services, and resiliency to unserved and underserved businesses and entrepreneurs, including but not limited to disabled people, the elderly, women, veterans, LGBTQIA+2S	<ol style="list-style-type: none"> <li>Advocate for people first business friendly services that are culturally sensitive, time and cost effective, and efficient for all types of businesses and entrepreneurs in Whatcom County.</li> </ol>	WWU SBDC, Bellingham Regional Chamber of Commerce, Bellingham Whatcom County Tourism, Sustainable Connections, Lummi Nation, Nooksack Indian Tribe, Lummi Indian Business Council, Team Whatcom members,	Ongoing & long-term

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

<p>people, Black people, Indigenous people, and people of color.</p>	<ol style="list-style-type: none"> <li>2. Support, promote, and provide accessible outreach and marketing of business resources and financial tools.               <ol style="list-style-type: none"> <li>a. Support increasing the amount of outreach materials available in languages other than English, captioning webinars, and offering American Sign Language, and other translation services.</li> </ol> </li> <li>3. Support and promote increased access to financial tools, such as access to capital, low interest loans, micro loans, grant programs, and other funding opportunities.</li> <li>4. Support and promote skills training and workforce development programs tailored the needs and wants of underserved and unserved groups.</li> <li>5. Support and promote partners and programs that improve and cultivate digital equity and literacy to increase access e-markets and international markets.</li> <li>6. Work with the Washington State Department of Commerce Tribal Liaison and collaborate with the Lummi Nation and Nooksack Indian Tribe to expand access to economic opportunities to their businesses and entrepreneurs.</li> <li>7. Promote and support the <a href="#">Aging Well Blueprint</a> for Whatcom County.</li> <li>8. Continue to participate in Whatcom County's Racial Equity Commission.</li> <li>9. Participate in and promote funding in anti-bias and diversity, equity, and inclusion training programs for public, private, and nonprofit partners and their employees.</li> </ol>	<p>Whatcom County, Whatcom County Racial Equity Commission, City of Bellingham, Port of Bellingham, Small Cities, WEDA, Washington State Department of Commerce, private sector, nonprofit sector</p>	
<ol style="list-style-type: none"> <li>2. Work to integrate diversity, equity, and inclusion goals and objectives into Goals 1-4 and 6.</li> </ol>	<ol style="list-style-type: none"> <li>1. Support and promote the development of accessible, affordable quality housing choices and childcare options across the income spectrum in Whatcom County.</li> <li>2. Support and promote equitable and affordable access to all basic utility services, including quality internet services, throughout Whatcom County.</li> <li>3. Promote the alignment of wages with the cost of living in Whatcom County.</li> </ol>	<p>Port of Bellingham's Regional Economic Partnership</p>	<p>Ongoing &amp; long-term</p>

# **Whatcom County CEDS 2021-2025**

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	4. Promote equal pay for equal work within existing jobs and businesses in Whatcom County.		
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<b>Goal 6: Resiliency Strategies</b>	<b>Milestones/Deliverables</b>	<b>Stakeholders/Collaborators</b>	<b>Timeline</b>
1. Promote, support, assist and explore opportunities to participate in economic recovery activities and programs.	<ol style="list-style-type: none"> <li>1. Continue to participate in the State Department of Commerce and WEDA meetings regarding economic recovery from the COVID-19 pandemic.</li> <li>2. Participate in the International Economic Development Council as they offer economic recovery programs.</li> <li>3. Continue to work with and support Team Whatcom members on economic recovery activities and programs.</li> </ol>	Washington State Department of Commerce, Washington Economic Development Association, WWU SBDC, Bellingham Whatcom County Tourism, Team Whatcom, and other local, state, federal, Tribal, and nonprofit partners..	Ongoing & long-term
2. Provide linkages between businesses and local, state, federal, Tribal, and private emergency management experts, economic development service providers, nonprofits, and local businesses, in order to improve disaster preparedness and expedite recovery among businesses.	<ol style="list-style-type: none"> <li>1. Work with local emergency management to create a Crisis Communications Plan for the economic development division at the Port of Bellingham.</li> <li>2. Promote and support the Western Washington University Small Business Development Center as the technical assistance provider of Whatcom County, in addition to being a vital resource for accessing business resources and financial tools.</li> <li>3. As part of BR&amp;E work, make businesses aware of the approved emergency plans in Whatcom County (a partial list can be found in <b>Appendix Z</b>).</li> </ol>	Whatcom County, City of Bellingham, and Small Cities, and Tribal Emergency Management divisions, WWU SBDC, Team Whatcom partners, private sector, nonprofit sector	Ongoing & long-term
3. Promote and support industry recovery from COVID-19 losses, in particular tourism, the arts, hospitality (including but not limited to restaurants, bars, and hotels), recreation, and events.	<ol style="list-style-type: none"> <li>1. Continue to work with and support Team Whatcom members on economic recovery activities and programs that focus on the most impacted industries.</li> <li>2. Continue to participate in the four-county (Skagit, Island, San Juan County) ADO collaborative <i>Northwest Washington Recovery Project</i>, including associated programs and deliverables.</li> </ol>	<ol style="list-style-type: none"> <li>1. Downtown Bellingham Partnership, Bellingham Regional Chamber of Commerce, WWU SBDC, Bellingham Whatcom County Tourism, Recreation Northwest, NWIRC, Sustainable Connections, Whatcom County, Port of Bellingham, City of Bellingham, Small Cities, the Lummi Nation, the Nooksack Indian Tribe, Whatcom County Health Department</li> <li>2. Economic Development Agency of Skagit County, the San Juan Economic Development Council, and Island County Economic Development Council</li> </ol>	Ongoing & long-term

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

4. Participate in long-term recovery and re-opening discussions to ensure commercial and trade openness along the US-Canada border during and after the COVID-19 closure.	1. Continue to participate in the Cross-Border Taskforce as long as it remains active to advocate for a full and safe reopening by both the US and Canadian federal governments.	Whatcom County Emergency Management, Whatcom County, Port of Bellingham, City of Bellingham, Small Cities, the Lummi Nation, the Nooksack Indian Tribe, Whatcom County Health Department, WWU BPRI, other state and federal partners and stakeholders, private sector businesses impacted by the ongoing closure (as of August 2021)	Ongoing & long-term
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## IV. Evaluation Framework

### 1. Performance Measures

The anticipated near-term benefits of this CEDS include the following:

- It will provide a resource of information for communities, economic and community development service providers, and businesses about Whatcom County's economy and development issues.
- It will guide and justify funding decisions made under the Whatcom County EDI Program.
- It will assist the county, cities, and tribes as they develop or update the economic development elements of their comprehensive plans.

Through the implementation of the vision, goals and strategies presented in this CEDS, the following long-term benefits are expected:

- Living wage jobs that can support families will be created and retained.
- Infrastructure development and improvements will support much needed residential and industrial development.
- Whatcom County's highly valued quality of life will be maintained and living conditions will improve for residents of all abilities, classes, genders, races, and religions.
- The CEDS will be ongoing tool for economic development coordination, communication, and information.

Data and measurements can provide a snapshot of the region's economic health at a point in time or over time. Whatcom County has a complex economic development ecosystem with many stakeholders involved that have both distinct and overlapping responsibilities and authority. Therefore, it is important to note that outcomes may not be attributed to implementation of the economic strategy by the Regional Economic Partnership at the Port of Bellingham, but rather other jurisdictions and organizations. It also likely due to a coordination of efforts.

It is also essential to recognize that our economic system exists in a local, state, and global context. Therefore, some economic metrics are strongly influenced by factors outside of any single actor's control. For example, per capita personal income could increase primarily due to an increase in commodity prices that Whatcom County specializes in, such as raspberries or blueberries. Alternatively, per capita income could increase not because wages have increased but due to gains via investments, such as private property increasing in value.

We will use our in-depth local knowledge combined with available quantitative data to understand why changes may be occurring and obtain a holistic picture of the economic health of the region.

The data presented in **Section I.5**, Economic Conditions, will be regularly updated and available online. This report and the CEDS project list will also be updated annually. We will therefore regularly evaluate all previously discussed data points with a specific interest in monitoring the following metrics:

- Number of jobs created by sector (ESD)
- Per capita personal income / average hourly and annual wages (ESD)
- Housing units built, housing stock volume, housing prices, permits issued by unit type (OFM, city, county, and tribal planning departments)
- Childcare slots needed versus available (service providers, State Department of Commerce)

Additionally, as part of the ADO contract obligations the economic development division at the Port is responsible for quarterly and annual reporting to the Washington State Department of Commerce. The division reports on a quarterly basis regarding recruitment, retention, and expansion efforts, as well as business assistance, and readiness and capacity building efforts. There are also best practices reports and a required ADO marketing plan filed annually. See **Appendix VI.6** for more information on ADO reporting.

## **2. Evaluation Plan**

The evaluation framework serves as a tool to gauge progress on the successful implementation of the overall CEDS. It is an important element of the ongoing planning process and helps to answer the questions “How are we doing?” and “What can we do better?”

This CEDS will be reviewed on a quarterly basis by the Port's economic development team to maximize the utility and relevance of this CEDS. Evaluation will include an assessment of progress towards the Strategies and Milestones outlined in the Action Plan, **Section III.3**. Evaluation will also include a regular review of background statistics presented in the Economic Conditions **Section I.5** as often as the data is updated by their respective sources.

The economic development division also has regular monthly meetings with Team Whatcom, which is a consortium of economic and community development providers in the region. These meetings and discussions keep the division informed of the current situation for Whatcom's business community and also often helps elucidate important issues that may necessitate updates to the economic development strategy.

Finally, in response to the findings of our regular evaluation processes, the economic development team at the Port of Bellingham regularly reports to and seeks guidance from the department's funders: the Port of Bellingham, Whatcom County, the City of Bellingham, and/or the Washington State Department of Commerce. This allows the CEDS to be flexible and responsive to economic development needs of Whatcom County.

## **V. Economic Resiliency**

Regional economic prosperity requires resiliency. Resiliency is the ability to adapt, avoid, withstand, and/or quickly recover from major disruptions and changes. Examples of disruptions include:

- Downturns in economy or specific industries and sectors
- Changes in demand for locally produced goods or consumer spending
- External shocks such as the exit of a major employer or a disaster of any sort, including a pandemic

Whatcom County has recently experienced several major disruptions and changes. The COVID-19 pandemic is ongoing and the state of Washington and Whatcom County have reopened as of June 30, 2021. The closures and capacity limits also caused major losses of revenue and profits for businesses in multiple industries throughout the county. The pandemic caused major disruptions in supply chains and logistics globally. Beyond the recent pandemic, other disasters, such as windstorms, flooding, and smoke from wildfires, have also had recent impacts on tourism, events, agriculture, and incurred millions in damages to private and public property throughout the county.

While the stakeholder groups engaged in the CEDS process had highly diverse opinions on most topics, one topic that all stakeholders agreed upon is that resiliency is extremely important to a strong and vibrant economy. This priority is expressed in resiliency being incorporated into multiple goals, objectives, strategies, and deliverables as stated in **Section II.2** and **II.3**.

## **1. Planning**

Whatcom County, the Port of Bellingham, the City of Bellingham, the Small Cities, the Lummi Nation, and the Nooksack Indian Tribe are all undertaking various planning efforts, which is currently in various stages, related to generating resiliency. The economic development division staff at the Port has been involved in many of these activities, either as committee participants or as stakeholders.

As of July 2021, Whatcom County's Emergency Management division is in the process of updating the countywide Natural Hazards Mitigation Plan. Having an updated Natural Hazards Plan provides Whatcom County access to FEMA funding in the event of a disaster. It also provides the county with an identified list of hazards and a mitigation plan for every jurisdiction. In addition, under the direction of the Climate Impact Advisory Committee (CIAC)<sup>24</sup>, Whatcom County has recently drafted an update of its Climate Action Plan (2021, p.12), which provides "guidance on how the County can achieve climate resilience to ensure long-term economic and social prosperity." The City of Bellingham similarly updated their Climate Action Plan in 2018.

The Port of Bellingham is currently working on many projects related to both climate and economic resiliency: resilience and climate action plans are in process, a vulnerability assessment is underway, and several data collection projects are in process, which will inform future development and improvements of Port buildings and infrastructure. The Port is in process of developing a Climate Action Strategy, which will provide a roadmap and structure-driven policies and targets mitigation and adaptation planning, which builds resiliency.

The Port is also currently developing a Roadmap to Resilience with support from Western Washington University graduate students. The Roadmap will identify and consolidate a range of resilience strategies into a comprehensive approach to address the following vulnerabilities:

- Natural Hazards: acts of nature and severe weather (e.g., storms, floods, earthquakes, sea level rise, wildfire, etc.).
- Technological Hazards: accidents and the failures of systems and structures (e.g., bridge collapse, building/engineering failures, grid outage, communications, fire, etc.).
- Human-caused Hazards: threats or intentional attacks (e.g., terrorism, cyber-attacks, pandemic, and economic recession, arson, etc.).

As for deliverables, the project will provide a comprehensive review of what strategies the Port currently has in place, information on what other Ports are doing to improve resiliency, and provide recommendations. This will provide a basis to develop a Port-wide Resiliency Plan.

In partnership with the City of Bellingham and Whatcom County, the Port of Bellingham has contracted with the US Geological Survey (USGS) to model the dynamic effects of sea level rise on the County coastline including all Port properties. The USGS Coastal Storm Modelling System (CoSMoS) model builds on the University of WA Climate Impacts Group projections. The CoSMoS model outputs will be used to evaluate site-specific sea level rise considerations for future development projects, including storm surge and areas of inundation. Preliminary CoSMoS model outputs are currently being incorporated into Port capital improvement project planning.

Additionally, the Port has contracted with a consultant to develop an infrastructure Vulnerability Assessment (VA) for sea level rise. This effort will aid the Port in prioritizing future projects to incorporate coastal resilience.

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<sup>24</sup> Whatcom County Council via Ordinance 2017-080, Whatcom Code Chapter 2.126, established the CIAC in 2017.

Aside from climate-related resilience, many aspects of this CEDS helps generate economic resilience. For example, working with partners to create more affordable and available housing and childcare options will reduce employee turnover and make it easier for many employers in Whatcom County to find workers. Diversity, equity, and inclusion also builds resilience in several ways. For example, by expanding access and inclusion, employers are less likely to overlook talent currently in Whatcom County. By improving accessibility to our marketing outreach efforts, more companies could get information critical to the health of their business. In fact, many of the CEDS goals, objectives, and strategies outlined in the Action Plan **Section III.2** and **III.3** are geared towards increasing economic resiliency. Goal 6 is entirely about generating resiliency.

## **2. Information Networks**

The Port of Bellingham has an Emergency Manager who is in regular contact with Whatcom County Emergency Management and City of Bellingham Emergency Management with information networks clearly established in their Comprehensive Emergency Management Plans. Information networks were put to the test in 2020 during the COVID-19 pandemic and the Port of Bellingham played a significant role in Whatcom Unified Command's (WUC) efforts. Initially, the Port's economic development team served as the basis for the Economic Impact Taskforce for WUC and the Port of Bellingham Emergency Manager served in a rotating position as Incident Commander for the County.

In addition, there are several established communication and information networks in Whatcom County and that the economic development division at the Port regularly participates in or helps facilitate, such as Team Whatcom (a consortium of economic and community development service providers), the Small Cities Caucus (a committee with elected representatives from the six Small Cities, City of Bellingham, Port of Bellingham, Whatcom County, frequent visits from state level elected officials and federal representative aides) the US-Canada Cross Border Taskforce, Whatcom County/City Planners Workgroup, and the Whatcom County Business and Commerce Committee. These committees and workgroups include a diverse array of stakeholders.

## **3. Pre-Recovery Planning**

As stated in the Action Plan **Section III.2** and **III.3**, a pre-recovery planning item that the economic development division at the Port will be undertaking is developing a departmental Crisis Communications Plans in coordination with Port, City of Bellingham, and County Emergency Management. Crisis Communication Plans are beneficial in several ways to resiliency, including reducing response time, creates better continuity of services, and helps create trust with partners, the private sector, and the public.

Any additional planning will be done by or under the guidance of the Whatcom County, the seven incorporated cities, the Port of Bellingham, the Lummi Nation, and Nooksack Indian Tribe, and their respective emergency management divisions.

## VI. Appendices

### 1. Frequently Asked Questions by Stakeholders

#### **What is REP?**

The Regional Economic Partnership (REP). REP is the name of the economic development division at the Port of Bellingham, created for marketing purposes and to signify the hub-and-spoke approach the team takes to their work.

#### **Do you only work on economic development at the Port or on Port properties?**

No. The Port is a countywide port district and part of its mission is economic development, therefore the economic development division works on economic development throughout Whatcom County.

#### **Why is REP/the economic development division at the Port completing the CEDS?**

Because the Port of Bellingham is the designated associate development organization (ADO) for Whatcom County. In 2019 the responsibility for updating the CEDS report and Project List was transferred from WCOG to the Port. The economic development division will be the administrator of the CEDS strategies and it will be used as the basis for the department's internal work plan.

#### **What is a CEDS?**

[Comprehensive Economic Development Strategy](#). It is a long-term planning document that is intended to guide economic development throughout a region.

#### **What are the benefits of having a CEDS?**

The CEDS is a requirement to be eligible to compete for EDA and other federal funding opportunities. It is also a requirement to be eligible for many Washington State funding opportunities. The CEDS also provides a long-term vision and plan for economic development in the region, making development more programmatic and efficient.

#### **Who will carry out the Action Plan?**

The Port of Bellingham's REP team will administrate the Action Plan outlined in **Section III.1-3**. It is the basis of the team's internal work plan.

#### **Why are housing and childcare objectives rather than goals?**

Many economic development and business development departments focus nearly exclusively on business recruitment, retention, and expansion work. However, the economic development division at the Port of Bellingham recognizes that affordable available housing and childcare is directly impacting Whatcom County's families and businesses and ultimately Whatcom County's economy. Housing and childcare are not goals because we view them as an integral part of the overarching goal of strengthening Whatcom County's base economy.

#### **What does "Support and Promote" mean?**

Throughout the goals, objectives, and strategies outlined in this document, the terms "support and promote" are used to indicate a variety of activities. Support and promote could mean attending board or advisory committee meetings. It could also mean financially supporting certain community events or projects to encourage the development of local markets. It might also mean referring businesses to another economic development or community service provider in Whatcom County. If you have questions about specific activities, please direct them to Jennifer Noveck ([jennifern@portofbellingham.com](mailto:jennifern@portofbellingham.com)).

#### **How can I provide feedback?**

This document was available for public comment from August 30 – September 30, 2021. Additional comments for future consideration and updates can be submitted directly to Jennifer Noveck ([jennifern@portofbellingham.com](mailto:jennifern@portofbellingham.com)).

### **How will feedback be evaluated and incorporated?**

Staff managing edits for the document will review each comment and piece of feedback with the economic development division at the Port and assess what changes, if any, should be made to the document. The most important factors will be if the feedback complies with the CEDS purpose and guidelines and if it fits within the vision, priorities, goals, and objectives established in the document.

## **2. Key Stakeholders**

From summer 2020 – summer 2021 several key stakeholder groups were solicited to engage in providing input and feedback into the CEDS process as well as the actual content to generate this document.

Those stakeholder groups were:

- Public agencies: city, county, tribal governments, public utility districts, regional planning groups
- Public advisory boards and committees: select groups that advise public agencies listed above on issues related to economic development
- Whatcom County Business and Commerce Advisory Committee: an advisory committee with sectoral representative that identifies on issues that impact businesses and the local economy.
- Private sector: businesses, entrepreneurs
- Team Whatcom members: a consortium of economic development service providers and nonprofit organizations in Whatcom County
- Post-secondary institutions: institutions offering post-secondary course work, degrees, and workforce training
- Other economic, social, or health organizations

### **Key stakeholders solicited for engagement one or more times (alphabetical order):**

[Bellingham Food Bank](#)  
[Bellingham Regional Chamber of Commerce](#)  
[Bellingham Technical College](#)  
[Bellingham Whatcom County Tourism](#)  
[Chuckanut Health Foundation](#)  
[City of Bellingham](#)  
[City of Blaine](#)  
[City of Everson](#)  
[City of Ferndale](#)  
[City of Lynden](#)  
[City of Nooksack](#)  
[City of Sumas](#)  
[Downtown Bellingham Partnership](#)  
[Fairhaven Association](#)  
[Habitat for Humanity](#)  
[Institute for Washington's Future](#)  
[Kulshan Land Trust](#)  
[The Lummi Nation](#)  
[The Lummi Indian Business Council](#)  
[Mount Baker Foundation](#)  
[The Nooksack Indian Tribe](#)  
[Northwest Agriculture Business Center](#)  
[Northwest Indian College](#)  
[Northwest Innovation Resource Center](#)

[Northwest Workforce Council](#)  
[Port of Bellingham](#)  
[Public Utility District #1](#)  
[Recreation Northwest](#)  
[Sustainable Connections](#)  
[Team Whatcom](#)  
[Technology Alliance Group for Northwest Washington](#)  
[The United Way of Whatcom County](#)  
[Unity Care Northwest](#)  
[Western Washington University](#)  
[WWU Border Research Policy Institute](#)  
[WWU Center for Economic and Business Research](#)  
[WWU Small Business Development Center](#)  
[Whatcom Business Alliance](#)  
[Whatcom Community College](#)  
[The Whatcom Community Foundation](#)  
[Whatcom Council of Governments](#)  
[Whatcom County](#)  
[Whatcom County Business and Commerce Advisory Committee](#)  
[Whatcom County Racial Equity Commission](#)  
[Whatcom Dispute Resolution Center](#)

***Whatcom County CEDS 2021-2025***

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[Whatcom Housing Alliance](#)

[Working Waterfront Coalition of Whatcom  
County](#)

[Whatcom Family YMCA](#)

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### **3. SWOT Analyses**

The seven incorporated cities and the Port of Bellingham all were solicited for and provided SWOT analyses of their jurisdictions. Each jurisdiction undertook its own process to complete the SWOT for the CEDS.

In total, fourteen industry-level SWOT analyses were completed for Whatcom County: agriculture, commercial and residential real estate, construction, energy, events, healthcare, manufacturing (includes food processing), marine trades, nonprofits, technology, tourism, recreation, and retail.

These industries were chosen for several reasons. First, we took direction from the Washington State Department of Commerce's (2021) industries of focus, which are aerospace, agriculture and food manufacturing, clean technology, forest products, information and communications technology, life science/global health, maritime, and military and defense. Not all of these are critical parts of Whatcom's economy (i.e. aerospace and military and defense) and were thus excluded. Second, we also took note of the sectors of focus, as decided by county ordinance, for the Whatcom County Business and Commerce Advisory Committee positions: agriculture, commercial real estate, energy, food processing, healthcare, internet technology, manufacturing, marine trades, recreation, and retail. Data for the largest employers by number of employees and the largest annual payroll by sector was also examined. According to the Office for Financial Management's Forecasting and Research Division (2020) the following sector categories all made up 10% or more of Whatcom's payroll and employee base: manufacturing, construction, healthcare and social assistance, retail, professional services, and accommodation and food services. That data is described in **Section I.5**.

Alignment with the Northwest Workforce Council's draft Strategic Plan for 2020-2024 (p. 4-5) was also considered. They note that key sectors for the Northwest region are advanced manufacturing, construction, and healthcare and related services.

For the industry SWOTs, each sector lead of the Whatcom County Business and Commerce Advisory Committee was solicited for input and feedback. Other stakeholder groups that provided input and feedback included public agencies, public advisory boards, Team Whatcom members, and other private sector actors.

**Figures 13-20** below are the seven incorporated city SWOTs and the Port of Bellingham SWOT.

**Figures 21-34** below are the fourteen industry SWOTs.

CEDS 2021

## Bellingham, WA SWOT Analysis

### Strengths

- Proximity to I-5, Waterfront, airport, rail, Shipping & Cruise Terminal, highly quality utilities, fiber optics
- Diversity in size & types of businesses
- Employment center for Whatcom County
- Progressive approach & investment in climate-friendly practices & businesses
- Multiple post-secondary institutions serve an array of business & community needs
- Local & regional focus on active transportation, public transit, bike-friendly

### Opportunities

- Streamline development process & regulations
- Improve working relationship between business & regulators
- Redevelopment strategy in existing employment centers such as the Waterfront, Old Town, Downtown, other mixed-use areas
- Redevelopment of retail & commercial spaces
- New business at Bellingham Shipping Terminal
- Local supply chain development

### Weaknesses

- Higher unemployment & lower wages than state averages
- Lack of available, affordable housing options
- Lack of large industrial parcels within City or UGA limits
- Complex land use code & zoning structures
- Vacant real estate doesn't meet needs/demand

### Threats

- Increasing cost of living, cost of housing
- Canadian border closure
- Fluctuating exchange rates
- Access to affordable, high quality water for all users
- Climate change impacts
- Perceived lack of safety in Downtown area

Figure 13: City of Bellingham SWOT analysis.

CEDS 2021

## Blaine, WA SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, highly quality utilities, new Lighthouse Point Water Reclamation & Sewage Treatment Plant
- Municipal electric provider (Blaine City Light)
- Low development costs & reasonable land prices
- World-class marinas & excellent parks
- Working Waterfront
- Long maritime history
- US Port of Entry - 1st Stop in America

### Opportunities

- Cross border commerce
- Surrey, BC growth rates
- Entry point for Canadian businesses seeking to locate/expand into US markets
- Marine Tourism
- Remote/hybrid work models

### Weaknesses

- Lack of shovel-ready residential building lots
- Lack of affordable, available housing options
- Lack of serviced industrial lots, limited desire by property owners to be annexed into UGA
- Workforce development
- High cost to develop west side of Peace Portal Drive
- Limited freeway access on the south side
- Lack of affordable, available fiber/broadband connection

### Threats

- Increasing cost of living, cost of housing
- Canadian border closure
- Fluctuating exchange rates
- Limited & unsteady gas tax revenue
- Climate change impacts
- Edge city in terms of commute times

Figure 15: City of Blaine SWOT analysis.

CEDS 2021

## Port of Bellingham SWOT Analysis

### Strengths

- County-wide authority & responsibility
- Holder of associate development organization (ADO) designation
- Close proximity to downtown Bellingham, Lower BC, Salish Sea and marine trades
- Adjacent to the I-5 Corridor
- Own & operate an international airport
- Own & operate multiple marine terminals & two marinas (Squalicum & Blaine Harbors)
- Strong, diverse tenant base in good terms
- Emerging Waterfront business community
- Ability to authorize Foreign Trade Zones
- Often seen as a neutral actor by other jurisdictions

### Opportunities

- Authorized for MATCA cleanup sites for industrial & residential development
- Authorized to build, expand, maintain critical infrastructure, such as broadband/internet
- Waterfront's federal Opportunity Zone status
- BU hub expansion & route expansion
- Industrial land and building development
- Expansion & recruitment of new marine trades clients

### Weaknesses

- Waterfront properties require environmental cleanup & improvements to be buildable
- Squalicum Harbor in need of improvements, as well as resiliency & mitigation work

### Threats

- Canadian border closures
- Competition from local small airports (Paine Field, Abbotsford) and Ports (Everett, Skagit)
- Disasters, particularly windstorms, floods, sea-level rise, fires, earthquakes, tsunamis

Figure 14: Port of Bellingham SWOT analysis.

CEDS 2021

## Everson, WA SWOT Analysis

### Strengths

- Access to state highway
- Centralized Downtown commercial core
- Recreational access to the Nooksack River
- Available industrial & commercial sites
- Small town quality of life
- Adequate utility capacity
- Relative housing affordability
- Supportive business community

### Opportunities

- Access to recreational opportunities
- Attractive alternative to other cities within Whatcom - larger lot sizes & lower housing prices

### Weaknesses

- Downtown located within floodplain
- Located outside of I-5 corridor
- Limited tax base
- Limited access to public transportation

### Threats

- Canadian border closure
- Fluctuating exchange rates
- Seasonal flooding

Figure 16: City of Everson SWOT analysis.

CEDS 2021

## Ferndale, WA SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, highly quality utilities
- Proximity to larger cities & markets
- Strong sense of community
- Strong growth potential

### Weaknesses

- Lack of affordable, available housing options
- Lack of competitiveness for jobs & business
- Limited access to public transportation
- Growth is stressing existing infrastructure
- Convenience of driving to other cities for consumption

### Opportunities

- Proximity to natural beauty, outdoor recreation
- Proximity to nearby larger cities nearby
- Regional benefits, such as coastal access & border access
- Creating Ferndale identity & focus

### Threats

- Increasing cost of living, cost of housing
- Canadian border closure
- Fluctuating exchange rates
- Climate change impacts
- Unplanned population growth
- Lack of diversified industry
- Unfunded mandates

Figure 17: City of Ferndale SWOT analysis.

CEDS 2021

## Nooksack, WA SWOT Analysis

### Strengths

- Proximity to Canada
- Adequate utility capacity
- Easy access to utilities
- Small town quality of life

### Weaknesses

- Lack of shovel-ready industrial sites
- State highway runs through downtown area
- Distance from I-5 corridor, rail, port, airport
- Limited tax base
- Limited access to public transportation
- Lack of centralized downtown commercial area

### Opportunities

- Access to regional recreation opportunities
- Industrial acreage available within UGA, close to utilities & highway
- Planned improvement to Guide Meridian

### Threats

- State Route 9 truck traffic
- Currency exchange rate fluctuations
- Border closure
- Flooding

Figure 19: City of Nooksack SWOT analysis.

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## Lynden, WA SWOT Analysis

### Strengths

- Proximity to Canada
- Loyal industry & businesses
- Existing cross-border industries
- Existing agricultural industries
- Northwest Washington Fair & Events Center
- Active Chamber & Downtown Association
- Discounted traffic impact fees in industrial area
- Community is family-oriented, strong work ethic
- High quality of life, high quality school options
- Strong social safety nets

### Weaknesses

- Industrial area requires road improvements
- Industrial land within city expensive or not for sale
- Lack of affordable, available childcare options
- Lack of affordable, available housing options
- Increasing cost of living create wage pressures
- Limited developable land
- Distance from I-5 corridor, rail, port, airport

### Opportunities

- Serviced industrial land in West Lynden
- Agritourism & recreation opportunities
- Expanding medical services
- Expanding trails, parks
- Urban flight to more rural areas
- Planned improvement to Guide Meridian

### Threats

- Labor costs rising
- Agriculture & environmental regulatory reforms
- High cost of construction materials
- Increasing litigious environment
- Perceived mistrust of state & federal government
- Water rights for all users

Figure 18: City of Lynden SWOT analysis.

CEDS 2021

## Sumas, WA SWOT Analysis

### Strengths

- Proximity to Canada
- Available industrial land with access to heavy haul road
- State highway to border via commercial area
- Affordable utilities
- Affordable housing options
- Industrial employment opportunities

### Weaknesses

- Located within large floodplain
- State highway through Downtown impacts local access to businesses
- Lack of shovel-ready sites
- Distance from I-5 corridor, rail, port, airport
- Empty commercial buildings in downtown

### Opportunities

- Canadian investment
- Manufacturing that serves Canada & the US
- Planned improvement to Guide Meridian
- On route to many outdoor & recreation opportunities

### Threats

- Currency exchange rate fluctuations
- Canadian border closures
- Limited land base to accommodate future growth
- Flooding
- Expanding FEMA floodway mapping may be an impediment to future development

Figure 20: City of Sumas SWOT analysis.

CEDS 2021

## Agriculture SWOT Analysis

### Strengths

- Long history & tradition of farming
- High quality land & temperate climate result in quality production
- Support for & workforce trained primarily in dairy, berries, & seed potatoes
- Highly skilled generational workforce
- Local & national demand for healthy food is strong
- Buy Local Campaign is strong
- Markets expanding for specialty crops
- Multiple supportive nonprofit organizations
- Many consumers willing to spend more for higher quality products

### Opportunities

- Diversification of crop production
- Expansion of organic & specialty crop production
- Expansion of local & regional direct sales
- Creating stronger local supply chains, linking ag to local food processing, hospitality industries
- Increase local ownership of equity & capital assets
- Alternative financing mechanisms to encourage employee ownership
- Support farmer-ownership of value-added production infrastructure
- Potential to grow value-added products within sector

### Weaknesses

- Inadequate local opportunities for technical & specialty crop farming building skills
- Lack of or inadequate quality worker housing
- Wages comparatively low to other local industries
- Perceived lack of collaboration & cooperation between different stakeholder groups within industry
- Disagreements in industry & community about H-2A program

### Threats

- Global competition
- Prices not dictated by producers, but often set regionally, nationally, or globally
- Uncertain future around legal & actual water supply
- Climate change
- Silver tsunami, retirement of business owners

Figure 21: Agriculture industry SWOT analysis.

CEDS 2021

## Construction SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, airport, passenger rail, port
- Highly skilled workforce
- Very strong, consistent demand for single family homes
- Salary & wages higher than other many industries
- Wages & profits in industry often spent locally
- Desirable place to live & work
- Diverse local economy strengthens industry

### Opportunities

- Collaboration with stakeholders to address housing crisis
- Additional industrial land & building development
- Modular building manufacturing has myriad benefits (waste reduction, building time reduced, minimizes on-site building time, increased affordability etc.)
- Annexations of buildable lands into city UGAs
- Changing consumer behavior creating markets for new products
- Streamlining & improving planning processes
- Reducing housing costs

### Weaknesses

- Operating costs are high
- Lack of worker housing & childcare options
- Lack of utility infrastructure to sites
- Small amount of buildable lands remaining
- Remaining buildable lands owned by a few owners
- Permitting process is slow
- Cost of living is high
- Workforce shortage

### Threats

- Rapidly increasing material costs & cost of construction
- Regulatory environment & associated costs
- Economic recession or downturns
- Changes that limit access to financial resources for homebuyers & developers

Figure 23: Construction industry SWOT analysis.

CEDS 2021

## Commercial Real Estate SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, airport, passenger rail, port (Cascadia Corridor)
- Proximity to 8 million residents within 100 miles
- Affordability compared to nearby major metropolitan areas and Lower Mainland BC
- Existing logistics and freight transportation systems
- Low vacancy rate
- Growing West Coast population
- Low cost for utilities

### Opportunities

- Create a large international business park that capitalizes on our proximity to Canada
- Develop professional Class A office space
- Explore opportunities for distribution centers
- Small user-owner manufacturing buildings
- Expand infrastructure and utilities for shovel-ready sites
- Address the County-wide need for wetland mitigation bank
- Build remote work-live spaces

### Weaknesses

- Lack of available product
- Lack of product diversity (size & type)
- Market is perceived to be small by outsiders

### Threats

- Regulatory burdens
- Rising cost of construction & materials
- Labor shortage in construction & user industries
- Anti-growth attitudes within community

Figure 22: Commercial real estate industry SWOT

CEDS 2021

## Events SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, airport, passenger rail, Cruise Terminal
- Events occur throughout Whatcom (geographically dispersed)
- Many, long-term, nationally known events
- Strong hospitality, recreation, & tourism industries to support large events
- Strong support for local music, arts, recreation, nonprofits & food
- Northwest Washington Fair & Events Center

### Opportunities

- Collaboration between multiple industries & events
- Changing demographics leading to demand for different retail, restaurant, event experiences
- Expansion of airlines, routes, potential ferry routes
- Improving tourism & recreation infrastructure
- Increasing wages
- Remote workers with large event experience

### Weaknesses

- Lack of affordable & available childcare options
- Lack of affordable & available housing options
- Shortage of entry level workers
- Social issues in Bellingham Downtown core restricting in person event attendance
- Lack of professional, covered multipurpose event spaces, such as soccer fields & volleyball pits
- Too many comparable events
- Lack of large venue spaces (600+ seated gala or large conference)
- Unwillingness to collaborate county-wide schedule

### Threats

- Proximity to other large metro areas with even larger, more well-known events
- Continued restrictions on large indoor or outdoor gatherings due to COVID-19 or other pandemics
- Disasters & pandemics

Figure 24: Events industry SWOT analysis.

CEDS 2021

## Energy SWOT Analysis

### Strengths

- Marine, pipeline, & rail logistics access
- Industry-leading energy efficiencies
- Community partnerships via private company investments
- Expanded public support for alternative energies
- Growing market for renewables & alternative energies
- Knowledgeable & skilled workforce
- Accessible, affordable power available to community & businesses
- Extensive high powered grid

### Weaknesses

- Perceived lack of community support for some sub-industries
- Rising labor costs
- Lack of long-term strategic planning focused on innovation that is in line with funding opportunities
- Lack of public, visible support for innovators
- Aging grid

### Opportunities

- Synergies between existing & new energy businesses
- Linking Western Washington University's new Clean Energy Studies Institute to business recruitment
- Innovation in existing energy transportation logistics & infrastructure usage
- Ocean research & innovation
- Growing cluster of electrified transportation companies & manufacturers
- Development of wind, solar, other renewable energy

### Threats

- Regulatory reforms for some sub-industries
- Project permitting slow, risky & uncertain for some sub-industries
- Climate change
- Opportunity growth in other areas drawing talent away from Whatcom County

Figure 25: Energy industry SWOT analysis.

CEDS 2021

## Manufacturing SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, rail, port, airport, shipping
- Uncongested logistics & transportation points
- Diversified manufacturing base
- Robust workforce development system
- Technology transfer due to FDI & exporting, due to high number of foreign owned companies (especially Canadian)
- Specialized planning group (IMTC) focuses on developing policy & infrastructure to streamline goods & services movement across the border
- Lower cost land than Lower Mainland BC
- Strong entrepreneur advocacy & support system (SBDC, NWIRC)

### Weaknesses

- Low industrial land & building supply in urban centers with connections to transportation
- Lack of shovel-ready sites
- Lack of available, affordable childcare options
- Lack of available, affordable housing options
- Rising cost of living necessitating increasing wages
- Perceived lack of support by parts of the local community

### Opportunities

- Increase local supply chain linkages
- Local direct & wholesale sales
- Create professional international business parks
- Expansion of & utilization of Foreign Trade Zones
- Increase opportunities for employee ownership
- Expanding Made in Whatcom branding & marketing

### Threats

- Canadian border closure
- Currency exchange rate fluctuation
- Trade wars & tariffs on supply chain inputs
- Disasters & pandemics

Figure 27: Manufacturing industry SWOT analysis.

CEDS 2021

## Healthcare SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border
- Availability of Canadian healthcare workers
- Regional hospital
- Proximity to Seattle for specialty needs
- Canadian customers

### Weaknesses

- Lack of affordable & available childcare options
- Lack of affordable & available housing options
- Shortage of qualified healthcare workers
- Certificate of need requirement
- Services not accessible to everyone in County due to mobility
- Lack of hospital capacity (limited ICU beds)

### Opportunities

- Changing business model to value based care
- New payment models to support telehealth, ability to care by license, allowable benefits that address social determinants of health
- Technology enabled care & case management
- Additional long-term care facilities
- Increase types of healthcare services & expand distribution to unserved & underserved areas
- Aging population that requires new innovative services
- Expansion of the Lummi and Nooksack Tribal Health Clinics & associated services

### Threats

- Declining workforce
- Regulatory changes & burdens
- Continual need for updating
- Canadian border closure
- Disasters & pandemics

Figure 26: Healthcare industry SWOT analysis.

CEDS 2021

## Marine Trades SWOT Analysis

### Strengths

- Proximity to the Puget Sound & Salish Sea
- Uncongested surface & air transportation
- Skilled marine trades workforce
- Multiple harbors & deep-water ports
- Available cargo handling capacity
- Long history of fishing, boatbuilding, shipyards
- Lummi Nation and Nooksack Indian Tribe maritime & river culture & knowledge of the land, water, & fish
- Local government supportive of industry

### Weaknesses

- Lack of clarity regarding the Port of Entry process for recreational boaters & commercial vessels entering at harbors
- Lack of rail connection to cargo
- Cleanup funding future unknown
- Waterfront properties require cleanup & significant improvements to be buildable
- Marine trades workforce housing shortage
- Slow permitting processes
- Perceived lack of cooperation between different stakeholder groups within the marine trades
- Fishery co-management difficulties

### Opportunities

- Port authorized to expand, build, maintain critical infrastructure, as well as MATCA cleanup sites
- Port has ability & land for additional development
- Growing vessel construction & repair expansion
- Bellingham Waterfront District is in a federal Opportunity Zone
- New technology & innovative marine companies
- Shipping Terminal reactivation, ability to expand & recruit new marine trades clients
- Maritime Washington National Heritage Area
- Hatcheries, salmon enhancement & restoration activities

### Threats

- Rapidly increasing cost of living
- Water adjudication / disputes over water rights
- Regulation of / restrictions on energy sector has implications for multiple marine trades
- Acidic & warmer water temperatures

Figure 28: Marine trades industry SWOT analysis.

CEDS 2021

## Nonprofit SWOT Analysis

### Strengths

- Dedicated, perseverant, resilient diverse workforce & leadership
- High levels of community support, devoted donors & volunteers
- Ability to adapt/re-adapt in a crisis
- Commitment to ongoing learning & improvement in justice, DEI work
- Many coalitions by and sometimes across sub-sectors
- Anchor nonprofits well-known in the community
- Access to Washington Nonprofits & 501 Commons sector resources, technical assistance and policy/advocacy support
- Some have active relationships with local government
- Popular & expanding local goods market, with environmental & economic benefits especially in the agricultural sector
- Local, regional and some national grant support
- Multi-sector by design to create healthy community (arts/culture, human services, environment, animals, etc.)
- Creative & adaptive responders to changing community needs
- Helps create a community safety net

### Opportunities

- Expand awareness of the sector's value to the community & economy
- Increased community engagement in nonprofit sector as volunteers & donors
- Acknowledgement of racism as a public health crisis
- Increasing gift income (if capacity to ask/apply)
- Expand understanding of importance of multi-year, unrestricted funding
- Increased public/private partnerships & increased policy & resource alignment
- Leverage sub-sector collaboration for more integration &/or shared functionality (e.g., administration, fund development, etc.)
- Development of pocket parks & neighborhood social centers to help build community & support mental health
- Better align zoning & land use with community values and vision
- Potential for healthcare nexus in eastern Whatcom County that provides medical, caregiving & pharmaceutical service

### Weaknesses

- Industry has low overall compensation & benefits
- Loss of experienced staff due to burnout, health risks & other factors
- Lack of staff capacity to explore & pursue funding opportunities
- Lack of supply chain control among organizations providing food (including school districts)
- Lack of multi-lingual staff & volunteers
- Lack of adequate cyber security
- Inadequate facilities for: affordable housing, food security, domestic violence shelters, childcare
- Smaller & newer organizations less well-known
- Lack of housing affordability for workforce
- General lack of diversity among organizational leadership, staff and board
- Lack of capacity to connect with & utilize skilled volunteer base
- Large # of nonprofits for a community the size of Whatcom County
- Challenges with community-wide communication due to limited local media outlets

### Threats

- Donor/advocate information overload
- Delays in funding opportunities, limited resources for myriad social issues
- Climate change, urban sprawl, reduced fish runs, lack of county-wide public transport
- Lack of adequate resources to address prevention, root causes & consequences of sexual & domestic violence, lack of adequate mental health services
- Onerous reporting requirements & overly restrictive gifts & funding
- Misperception that organizations working in arts & culture, the environment as "nice to have" rather than essential
- Political polarization hampers efforts to communicate factual information critical to understanding root causes & solutions & threatens cohesion & ability to bring people together to solve big social challenges
- Perceptions of service duplication
- Risk of lower giving due to organizational capacity limitations, challenges of hosting in-person events & other factors
- Challenges to recruit & retain skilled Board Members
- Donors turning into clients that require services due to personal economic decline

Figure 29: Nonprofit industry SWOT analysis.

CEDS 2021

## Residential Real Estate SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, airport, passenger rail, port
- Very strong, consistent demand for single family homes
- Growing West Coast population
- Diversity in location: mountain-river-sea natural geography, and urban, rural, and small town options
- Diverse communities

### Opportunities

- Explore possibilities for converting long vacant retail spaces into residential housing
- Increasing product availability & diversity of choices
- Bring in developers from outside of the region

### Weaknesses

- Lack of available product/supply for sale
- Lack of product diversity (size & type)
- Lack of affordable housing options
- Lack of worker housing options
- Lack of utility infrastructure to sites
- Small amount of buildable lands remaining
- Remaining buildable lands owned by a few owners
- Permitting is slow

### Threats

- Proximity to other large metro areas with even higher land, building, & housing costs
- Rapidly increasing material costs & cost of construction
- Increasing property values may price people out of the market

Figure 31: Residential real estate SWOT analysis.

CEDS 2021

## Recreation SWOT Analysis

### Strengths

- Proximity to the Puget Sound & Salish Sea
- Proximity to Canada, San Juan Islands, North Cascades, & Seattle
- Outdoor recreation opportunities for everyone
- Strong local manufacturing base
- Local residents & governments supportive of industry

### Opportunities

- Expanded airlines & routes
- Expand park & recreational facilities closer to population centers
- Increase bike friendly infrastructure & thus bike tourism
- Waterfront redevelopment that preserve & expands existing maritime businesses & increases options for commercial & recreational uses
- Cross-border e-commerce, consumer direct sales
- Implement & fully fund the Whatcom County Pedestrian & Bicycle Plan
- Expanded consumer diversity & inclusion

### Weaknesses

- Lack of light industrial land and buildings for recreation manufacturers
- Lack of affordable, available housing choices
- Lack of affordable, available childcare options
- Traffic congestion, increasing sprawl
- Lack of county-wide planning or funding to improve / expand tourism & recreation infrastructure

### Threats

- Raw material & consumer goods inflation
- Climate change
- Pressure for immediate action on carbon reduction & offsetting
- Tariff wars with China
- Retail shift to e-commerce
- Preservation & access to public lands uncertain
- Rising labor costs due to rising cost of living

Figure 30: Recreation industry SWOT analysis.

CEDS 2021

## Retail SWOT Analysis

### Strengths

- Proximity to I-5, Canadian border, airport
- Cross border consumers
- Multiple strong retail areas in city Downtowns
- Local, immediate availability of products (same day pick up & delivery, last minute shopping)
- Strong support for Think Local First campaign
- Strong local culture & support for certain sub-industries, such as craft beer
- Regional shopping (northbound terminus)

### Opportunities

- Increasing marketing sophistication of retail businesses
- Increasing usage of customer data / trends
- Collaboration between retail businesses
- Online shopping expansion
- Outdoor dining experiences
- Changing demographics leading to demand for different retail, restaurant experiences
- Industry can react quickly

### Weaknesses

- Lack of affordable & available childcare options
- Lack of affordable & available housing options
- Shortage of entry level workers
- Lower wages
- High levels of disruption
- High overhead & operating costs
- Social issues in Bellingham Downtown core restricting number of in person visits
- End of line for distribution
- Disagreement among stakeholders regarding value/cost of local options

### Threats

- Currency exchange rate fluctuation
- Competition with large online retailers for inventory & direct sales / wholesale
- High degree of competitiveness among small retailers
- Production & delivery delays
- Canadian border closure
- Disasters & pandemics

Figure 32: Retail industry SWOT analysis.

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## Technology SWOT Analysis

### Strengths

- Highly desirable location
- International airport
- Nearby major urban tech hubs: Seattle & Vancouver
- WWU Computer Science program
- WCC Cyber Security program & specialty
- Robust infrastructure in Bellingham area
- Many existing technology companies

### Weaknesses

- Increasing cost of living, housing prices
- Perceived anti-growth attitudes in community
- Poor broadband access county-wide
- Lack of local identity and sectoral focus
- Slow Waterfront redevelopment
- Lack of technology spaces for sale or lease
- Lack of public knowledge about existing tech companies in the County

### Opportunities

- Increased airlines & routes
- Waterfront redevelopment with tech focus
- New remote/hybrid options could attract new talent
- Many industries within Whatcom require value-added production upgrading & innovation
- Creating a strong STEM network
- Post-secondary education & industry connections to create aligned programs & talent pipelines

### Threats

- Remote/hybrid work may make cheaper locations more desirable
- Remote/hybrid companies & workers less engaged in community
- Regulatory changes
- Cyber attacks

Figure 33: Technology SWOT analysis.

CEDS 2021

## Tourism SWOT Analysis

### Strengths

- Proximity to Canada, San Juan Islands, North Cascades, & Seattle
- Visibility of tourism as an economic driver & partner
- Robust visitor counts & economic impact (5th in WA State)
- Known brand, high number of repeat visitors
- Outdoor recreation opportunities abound
- Residents support a sustainable culture
- Highly educated workforce

### Weaknesses

- Small staff dedicated to tourism
- Inadequate & unstable tourism funding
- Difficulty finding workers to take entry level jobs
- Lack of tourism worker housing
- Aging or inadequate tourism infrastructure
- Inadequate broadband throughout the county

### Opportunities

- Diversification of tourism
- Seasonal planning for Point Roberts
- Ferry to San Juan Islands
- Mosquito Fleet from Fairhaven, Bellingham, Blaine, Semiahmoo, Point Roberts
- New airlines & routes
- Adventure companies & small sustainable cruise ships
- Electric vehicle charging stations
- Zero waste for hospitality industry
- Cultural heritage tourism
- Waterfront festivals & events in Bellingham, Blaine, Birch Bay as well as the Lummi Nation

### Threats

- Currency exchange rate fluctuations
- Canadian border closures
- Environmental degradation, loss of species & habitats
- Lack of funding for infrastructure
- Noise
- Public sentiment regarding visitors/tourism
- Disasters & pandemics

Figure 34: Tourism industry SWOT analysis.

#### **4. Reports and Strategic Documents**

During the CEDS process, numerous documents were referenced to draft this report update and many were also shared by stakeholders during the engagement and information sharing process.

These documents included but were not limited to past economic development strategies, city, port, and county comprehensive plans and other planning documents, sub-area plans, city, port, and county action plans, emergency management plans, public health documents and reports, parks and recreation planning documents, organizational strategic plans of economic and community development service providers, as well as reports by academics and consultants specific to Whatcom County.

Below is a list and documents are linked when available.

#### **City, Port, and County Comprehensive Plans and Planning Documents**

[Bellingham International Airport Master Plan 2019](#)  
[City of Bellingham Comprehensive Plan 2016](#)  
[City of Blaine Comprehensive Plan 2016](#)  
[City of Everson Comprehensive Plan 2016](#)  
[City of Ferndale Comprehensive Plan 2016](#)  
[City of Nooksack Comprehensive Plan 2016](#)  
[City of Sumas Comprehensive Plan](#)  
[Port of Bellingham's Comprehensive Scheme of Harbor Improvements](#)  
[Whatcom County CEDS 2015](#)  
[Whatcom County Comprehensive Plan 2016 \(updated in 2021\)](#)  
[Whatcom County Land Capacity Analysis 2016](#)  
[Whatcom County Buildable Lands Program Documents](#)

#### **Sub-Area Plans**

[Bellingham Urban Fringe Subarea Plan](#)  
[Bellingham's Waterfront Sub-Area Plan](#)  
[Birch Bay Community Plan 2004](#)  
[Foothills Subarea Plan 2011](#)  
[Lummi Island Subarea Plan 2009](#)  
[Point Roberts Sub-Area Plan 2001](#)

#### **City, County, Port Action Plans**

[Bellingham Climate Protection Action Plan 2018](#)  
[Bellingham Housing Action Plans and Performance](#)  
[Bellingham 2018-2022 Consolidated Plan: 2021 Action Plan](#)  
[Whatcom County Climate Action 2021](#) (pending approval)

#### **Emergency Management Plans**

[City of Bellingham Comprehensive Emergency Management Plan 2018](#)  
[Port of Bellingham Tsunami Maritime Response and Mitigation Strategy](#)  
[Whatcom County Comprehensive Emergency Management Plan](#)  
[Whatcom County Disaster Debris Management Plan](#)  
[Whatcom County Natural Hazard Mitigation Plan 2016](#)  
[Whatcom County Natural Hazard Mitigation Plan 2021](#) (pending approval)  
[Whatcom County Severe Storm Action Plan](#)  
[Whatcom County Tsunami Action Plan](#)

## **Public Health Documents and Reports**

[Chuckanut Health Foundation: Aging Well Whatcom Blueprint](#)  
[Whatcom County Community Health Improvement Plan 2012-2016](#)  
[Whatcom County COVID-19 Community Health Impact Assessment 2021](#)  
[Whatcom County Executive Summary of 2018 Community Health Snapshots](#)

## **Parks and Recreation Plans and Recreation Reports**

[Bay to Baker Trail](#)  
[Birch Bay Community Park Master Planning](#)  
[Economic Analysis of Outdoor Recreation in Washington State 2020](#)  
[Lake Whatcom Park Trail Plan](#)  
[Lily Point Marine Park Development Plan](#)  
[Natural Heritage Plan](#)  
[Whatcom County Comprehensive Parks, Recreations, and Open Space Plan 2016](#)  
[Whatcom County Comprehensive Parks, Recreations, and Open Space Plan 2022](#) (still in development)

## **Organizational Strategic Plans**

[IMTC Purpose, Goals, & Strategies](#)  
[PUD#1 of Whatcom County Strategic Plan](#)  
[Northwest Workforce Council Strategic Plan](#)  
[Whatcom Mobility 2040](#)

## **Key Reports**

[COVID-19 and the US Canada Border: Impacts on the Tourism Industry in Whatcom County](#)  
[COVID-19 and the US Canada Border: Canadians and Taxable Retail Sales](#)  
[COVID-19 and the US Canada Border: Retail Shopping Destinations](#)  
[Point Roberts 2020 Economic Profile](#)  
[Project Equity: Succession Planning and Employee Ownership](#)  
[Washington State Department of Commerce Child Care Industry Assessment Report 2020](#)  
[Whatcom County Economic Profile 2020](#)  
[Whatcom County I-5 Infrastructure Study 2020](#)  
[Whatcom County Rural Broadband Feasibility Study](#)  
[Whatcom County Child Care Demand Study 2021](#)  
[Whatcom County Top Employers: 2020](#)  
[Whatcom Futures: Toward a Sustainable Economy 2014](#)

## **5. Port of Bellingham Economic Development Division Reporting**

As part of the associate development organization (ADO) contract obligations, the economic development division at the Port is responsible for quarterly and annual reporting to the Washington State Department of Commerce. Every biennium, as part of the contract updating, the Port sets new targets for business recruitment activities, business retention and expansion (BR&E) work, as well as business assistance, and readiness and capacity building. The economic development division reports its progress on a quarterly basis. The team also submits an annual best practices and marketing plan as part of the reporting requirements.

The Washington State Department of Commerce is currently reevaluating their data collection metrics and processes for its ADOs due to consistent pressure from ADOs to collect data that is both more relevant and shows the true extent of our economic development efforts. In 2021 Community Attributes (CAI) was

***Whatcom County CEDS 2021-2025***

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contracted to interview ADO staff, evaluate current practices, make recommendations for improvements, and develop a user-friendly data collection tool.

**6. Whatcom County CEDS Project List 2021 Update (chart begins on next page)**

DRAFT

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
<b>Bellingham Projects</b>							
Bellingham Wetland Mitigation Bank	Bellingham	Complete acquisition for the regional Wetland Mitigation Bank north of Bellingham. Additional mitigation construction will likely be required.	Public Works	5,000,000	EDI, private funds, and federal, state and local funding sources	Yes	Yes
Old Town	Bellingham	Construct critical street and utility infrastructure to support redevelopment (affordable housing, market rate housing, homeless housing and commercial and retail) of approximately 8 city blocks in Old Town.	Parks, Public Works	3,000,000	EDI, Real Estate Excise Tax, Greenways Levy, private funds, Park Impact Fees, LIFT, Street and other federal, state and local funding sources	Yes	Yes
Squalicum Pier	Bellingham	Convert a now a defunct industrial pier in a currently underserved area of Bellingham on the north end to a pedestrian pier.	Parks	15,000,000	EDI, Real Estate Excise Tax, Impact Fees, Greenways, other federal, state and local funding sources	Yes	Yes
Resource Recovery at Post Point	Bellingham	Conversion from biosolids incineration to digestion, renewable biogas production and Class A biosolids for beneficial use. Improvements are needed to replace aging equipment, expensive to repair, and incinerates – rather than recovers – reusable resources.	Public Works	250,000,000	EDI, Real Estate Excise Tax, Impact Fees, other federal, state and local funding sources	Yes	Yes
Meridian / Birchwood Roundabout Phases 1 and 2	Bellingham	Phase 1 – Merge Squalicum Parkway freight route with Birchwood Avenue into Meridian/Birchwood traffic signal; decommission Meridian/Squalicum. Phase 2 – Reconstruct Meridian/Birchwood	Public Works	12,000,000	EDI, Port, WSDOT, Greenways and other federal, state and local funding sources	Yes	Yes

**Whatcom County CEDS 2021-2025**

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		traffic signal into a multimodal roundabout.					
Railroad safety improvements	Bellingham	Includes safety improvements to at-grade rail crossings and elimination of other at-grade crossings throughout the City.	Public Works	5,000,000	EDI, Motor Vehicle Fuel Taxes, Vehicle Reg. Fees, Sales Tax, other federal, state and local funding sources	Yes	Yes
Urban Village Redevelopment Projects	Bellingham	Redevelop through partnerships or other methods, chronic vacant buildings or other opportunity sites into a mixed-use development compatible with the sub-area plans in an effort to spur additional private sector development to increase housing and job opportunities.	Planning, Public Works	15,000,000	EDI, targeted grants, CDBG, HOME, HUD 108, other federal, state, local and private funds	Yes	Yes
Childcare Facilities	Bellingham (all Whatcom County)	Explore partnerships with non-profit childcare providers, such as YMCA, Boys & Girls Club, Opportunity Council and others to acquire (with little debt) facilities and consider these facilities and the associated service as public infrastructure.	Public Facility	Varies	EDI, philanthropy, CDBG, State and Federal Sources	Yes	Yes
<b>Birch Bay Water &amp; Sewer District Projects</b>							

**Whatcom County CEDS 2021-2025***Prepared by the Port of Bellingham's economic development division*

<b>Blaine Projects</b>							
Peace Portal Drive & Bell Road Intersection Signalization	Blaine, south side	Bell Road (SR 548) connects the communities of Birch Bay and Semiahmoo to downtown Blaine and Interstate-5. Based on WSDOT evaluation of alternatives, the City supports construction of an at-grade, signalized intersection with channelization improvements (bypass lanes) to improve traffic flow and reduce delays.	Public Safety, Public Works, Economic Development	2,300,000	State Legislative Grant, WSDOT, TIB	Yes	Yes
Lettered Streets Sewer Capacity Improvements	Blaine, central	Rehabilitate and upgrade a primary sewer conveyance system function at capacity. The work will include repairing existing sewer lines and adding a new line to alleviate flow restrictions in 90+ year old lines. This work is necessary to accomodate planned residential growth in the fastest growing area in the City.	Public Safety, Public Works, Economic Development	7,500,000	Local, sewer bond, Commerce	Yes	Yes
Lettered Streets Sewer Freeway Crossing	Blaine, central	This critical sewer infrastructure improvement will install a new 24" line across Interstate-5 and provide necessary capacity to accommodate planned residential growth.	Public Safety, Public Works, Economic Development	3,300,000	Local, sewer bond, Commerce	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Downtown Revitalization	Blaine, downtown	The project includes pedestrian-oriented amenities to reinforce downtown as the heart of the community and a tourism destination. For safety and ADA accessibility, the project replaces 7,300 feet of aging and uneven sidewalk, along with removal of select street trees that have contributed to sidewalk buckling. Concurrent updates to utilities are also expected.	Public Safety, Public Works, Economic Development	1,700,000	State Legislative Grant, WSDOT, TIB, TBD, Gas Tax revenue, REET	No	Yes
H Street, Grant and 14th Street Intersection Improvements	Blaine, central	This project corrects alignment issues with a critical street intersection in Blaine's Gateway District, which will help support job growth in the City's largest commercial district.	Public Safety, Public Works, Economic Development	1,018,000	Local, TIB, developer	Yes	Yes
East Blaine Infrastructure Extension	Blaine, east side	Extend sanitary sewer, electric and water infrastructure to the east end of the City limits.	Public Works, Economic Development	3,000,000	Local, developer, tax increment financing	No	Yes
Peace Portal Community Trail (Phase III)	Blaine	This trail is a key component of the City's Non-Motorized Transportation Plan and Tourism Development and Marketing Plan. The trail connects Blaine to Birch Bay by passing through Whatcom County and serves as an important link for safe bicycle and pedestrian access between the two communities. Phase III runs along Peace Portal Drive from Hughes Avenue to Bell Road.	Public Safety, Public Works, Economic Development	249,000	TIB, RCO Grant, BBBPRD2, WSDOT Pedestrian and Bike Safety	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Peace Portal Community Trail (Phase IV)	Blaine, Whatcom County	Phase IV crosses the Peace Portal Drive/Bell Road intersection and the runs south next to Blaine Road and crosses the Dakota Creek Bridge.	Public Safety, Public Works, Economic Development	500,000	TIB, RCO Grant, BBBPRD2, WSDOT Pedestrian and Bike Safety	No	Yes
Marine Drive Improvements, Phase 3	Blaine, Port of Bellingham	The City and the Port of Bellingham are coordinating on an effort to reconstruct the roadway to ensure access to the pier and protection of the harbor. Under the proposed project, a new truck-compatible roadway will serve the industrial shipyard. A single vehicle lane, a bike/ped lane, and a bulkhead will continue for the final 300 feet to provide access to the public pier.	Public Safety, Public Works, Economic Development	4,000,000	STBG Regional Funds, TIB, Port of Bellingham	Yes	Yes
New 630' Booster Pump Station (East Blaine)	Blaine, east side	New booster station establishing new high pressure zone to provide adequate water pressure to first phase residential development in east Blaine.	Public Works, Economic Development	750,000	DOE Centennial Funds, USDA-RD Grant/Loan, PWTF	Yes	Yes
<b>Everson Projects</b>							
Regional Stormwater Management facility	Everson	Design and construct a regional stormwater management facility at the former Everson Golf Course property to serve the downtown commercial area.	Public Works	2,000,000	Local funds, Ecology grants and loans, EDI funds	Yes	Yes
Ramstead Regional Park	Everson	Design and construct a regional park facility at the former Everson Golf Course property.	Public Works, Planning	500,000	City parks fund, RCO grant, private donations	Yes	Yes
Everson Road Sewer line	Everson	Upgrade existing 8" line for future growth on the southwest portion of the City and UGA.	Public Works	165,000	Local funds	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

East Main Street Water Main upgrade	Everson	Increase water main from 6 to 10 inches from Kirsch Dr. east to City limits, providing better pressure for fire protection and emergency uses with the City of Nooksack.	Public Works	1,200,000	LMF	No	Yes
East/West Connector	Everson	Future all-weather arterial connecting Mission Road and Everson-Goshen Road (SR 544), used as primary arterial to future UGA and light industrial area of South Everson.	Public Works, Economic Development, Finance	2,400,000	CDBG; GMA Planning Grant; CERB; EDA	Yes	Yes
West Everson Sewer and Water System Improvements	Everson	Construct water and sewer mains and sewer lift station to serve West Everson annexation area.	Public Works	1,000,000	EDI, ULID, developer funding and local funds	Yes	Yes
<b>Ferndale Projects</b>							
Downtown infrastructure improvements	Ferndale	Upgrade underground utilities to meet anticipated future demand. Wayfinding signage for public parking and amenities. Public/private funding to assist incoming development with utility improvements beyond the immediate project location.	Public Works, Economic Development	2,500,000	Local funds, REET, EDI	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Second Avenue (Downtown) pedestrian conversion	Ferndale	Reconfigure Second Avenue north of Main Street for pedestrian-only purposes, following the completion of the Thornton Street Extension Project. The conversion would include the modification of other Downtown streets to one-way traffic and is expected to allow for a smoother flow of traffic while creating additional pedestrian areas in the Downtown core, increasing commerce and overall activity in the area.	Public Works, Economic Development	3,000,000	Local funds, REET, EDI, Private funds	Yes	Yes
Portal Way Corridor Improvements	Ferndale	Improve corridor, create consistent road profile and frontage on Portal Way. Three sections (I-5 to Newkirk, Newkirk to Kass, Kass to Trigg)	Public Works, Planning	15,000,000 (5,000,000 x 3)	TBD, TIB, Local funds, REET, Private funds	No	Yes
Downtown Post / Street Clock project	Ferndale	Install a post/street clock within the Downtown Core Area or along the Centennial Riverwalk Park. Clock to serve as downtown entrance beautification piece.	Economic Development, Planning	50,000	Public and Private Partnerships, Local Funds, TBD, Economic Development Planning	No	Yes
Utility extension to Malloy / Grandview Ave	Ferndale	Opens up area for development, protects sensitive watersheds from existing development built to rural standards – [Grandview area], provides fire flow, etc.	Public Works	8,000,000	PWTF, Local, EDA, DWSRF	No	Yes
Ferndale City Hall, Municipal Court and Council Chambers	Ferndale	Construct new, or expand existing facilities to accommodate future growth	Public Works	10,000,000	Local Funds, REET, EDI	Yes	No

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Nordic Way Fireline	Ferndale	Construct an approximately 750' water/fire line from Nordic Way, beneath the BNSF railroad tracks and Hovander Road, to serve a growing industrial area at Scout Place/ Nielsen Road. The fire line would create a "loop" for the purpose of maintaining adequate water pressure in the area, allowing more efficient firefighting response, and enabling larger facilities to be constructed in the area.	Public Works	500,000	Local Funds	No	Yes
Right-of-Way beautification and landscaping along major corridors	Ferndale	Main Street, Portal Way and Slater Road: The creation of attractive, unified landscaping along major corridors provides a sense of place and welcome for new development. Project would include staff and consultant time to develop a coordinated landscaping proposal, funding for materials and plants, and planting.	Public Works	300,000	TIB, TBD, Local, Federal, State	No	Yes
Interstate 5 Exit 262 Roundabouts	Ferndale	Construct on/off ramp roundabouts along I-5 at exit 262 where they intersect Main Street. (1st entry) Reconfigure and widen overpass deck to accommodate two lanes in each direction, as well as non-motorized connectivity. Establish two-lane roundabouts at both north and south-bound ramps; reconfiguration of ramps to prevent existing main-line interruptions. (2nd entry)	Public Works	4,000,000 (1st entry) + 25,000,000 (2nd entry)	State and Federal Grants; WSDOT Funding	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Vista Middle School	Ferndale	Roofing Replacement Project	Public Works, Economic Development	1,000,000	Capital funds	No	Yes
Central Elementary School	Ferndale	Roofing Replacement Project	Public Works, Economic Development	500,000	Capital funds	No	Yes
Vista/Skyline paving project	Ferndale	Repair and resurface asphalt parking lots and bus loops	Public Works, Economic Development	550,000	Capital funds	No	Yes
Custer Elementary School	Ferndale	Exterior brick restoration and reseal	Public Works, Economic Development	800,000	Capital funds	No	Yes
Custer Elementary School	Ferndale	Roofing replacement project	Public Works, Economic Development	400,000	Capital funds	No	Yes
Ferndale School District HVAC upgrade	Ferndale	Upgrade HVAC Controls at 8 schools	Public Works, Economic Development	1,000,000	Capital funds	No	Yes
Ferndale School District Security Upgrade	Ferndale	Upgrade school facilities with secure vestibules, single visitor entry area with camera and buzz-in system, fencing where needed to create a secure facility	Public Works, Economic Development	1,000,000	Capital funds	No	Yes
Custer Elementary School	Ferndale	Parking Lot and bus loop resurface and replacement	Public Works, Economic Development	200,000	Capital funds	No	Yes
Phillips 66 Ballfields	Ferndale	Convert ballfields to all-weather, multisport surface, update lighting and light standards	Public Works, Economic Development	2,000,000	Local, Federal, State, Corporate donation	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Ferndale Terrace Improvement	Ferndale	Reconstruct and widen approximately 2,500' of existing Ferndale Terrace Roadway to City standards, including curb, gutter, sidewalks, and improvements to the City's stormwater, water, and sewer utilities.	Public Works	5,000,000	TIB,TBD, Local, Federal, State, Ecology (stormwater component)	No	Yes
Thornton Street, Vista to Malloy Avenue	Ferndale	Reconstruct approximately 1,300' of the Thornton Street roadway following the Thornton Street Extension project. Project would establish sidewalks, curbs, bike lanes, and new road surfacing on both sides of the street.	Public Works	5,000,000	TIB, TBD, Local, Federal, State	No	Yes
Interstate 5 Exit 263 Roundabouts	Ferndale, WSDOT	Two lane roundabout or roundabout with an eastbound slip lane to replace an existing compact roundabout, associated with the Thornton Street Extension. Project includes a pedestrian/bike extension beneath the freeway overpass to connect to existing non-motorized access to the east and west.	Public Works, WSDOT	30,000,000	WSDOT Funding, Federal, State	No	Yes
Pioneer Park Entry and Pioneer Village Museum Improvements	Ferndale, Whatcom County	Reconstruct the Pioneer Park entryway and parking lot to create a sense of entrance into a unique regional historic attraction. The project would also include needed improvements to the museum, such as preservation and acquisition of collections, digitization of original documents, and updated presentations and displays.	Old Settlers' Association, Ferndale Heritage Society, Ferndale	1,500,000	State Funding, Local donations	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Golden Eagle Drive, Shuksan Drive, and Ferndale High School frontage	Ferndale, Ferndale School District	Reconstruct approximately 1,000' of existing roadway adjacent to new Ferndale High School campus. Establish school bus parking, improve motorized and non-motorized interface, construct sidewalks.	Ferndale School District	2,000,000	Local School Levy, REET, Local, State, Federal funding	No	Yes
Interstate 5 Exit 266 Interchange Reconfiguration and Corridor Improvements	Ferndale	Corridor reconstruction project to reconfigure and widen overpass deck and ramps and resolve rail and industrial traffic congestion associated with Whatcom County's primary industries at Cherry Point.	Public Works	50,000,000	State and Federal Grants; WSDOT Funding	No	Yes
Douglas Road Reconstruction	Ferndale	Reconstruct approximately 2,000 lf of an existing roadway, including sidewalks and utility improvements. Project would make additional serviced land available for development.	Public Works	2,700,000	City Transportation Benefit District funding	No	Yes
Schell Marsh Boardwalk	Ferndale	Construct a ~2,000 lf boardwalk/trail from the Ferndale Public Library to the Phillips 66 Ballfields, rehabilitate a declining wetland area. Boardwalk would increase commerce within the Downtown core, including further redevelopment of the area.	Public Works	1,500,000	EDI, State Grant, Park Mitigation Fees, Private Donations	Yes	Yes
Malloy Culvert Reconstruction	Ferndale	Replace existing fish barrier culvert with a new fish-friendly culvert, reconstruct bridge deck and extend City utilities to an unserved and undeveloped industrial area within the City.	Public Works	3,000,000	EDI, Stormwater Funding	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

<b>Lake Whatcom Water &amp; Sewer District</b>							
Dellesta Lift Station Renovation	North Shore, Lake Whatcom	Renovate existing sanitary sewer lift station	Public Works	380,000	Sewer Reinvestment Fund	No	No
Edgewater Life Station Renovation	North Shore, Lake Whatcom	Renovate existing sanitary sewer lift station	Public Works	380,000	Sewer Reinvestment Fund	No	No
Lake Whatcom Boulevard Sewer Main Rehabilitation	South Shore, Lake Whatcom	Rehabilitate a principal sanitary sewer main	Public Works	250,000	Sewer Reinvestment Fund	No	No
Division 7 Reservoir	Sudden Valley	Replace an aging (1971) reservoir with two new reservoirs meeting current seismic standards	Public Works	2,080,000	1,515,000 FEMA grant, 565,000 District Water Reinvestment Fund	No	Yes
<b>Lummi Nation Projects</b>	Please note: the Lummi Nation also has their own CEDS and CEDS Project List, therefore it is in a separate appendix.						
<b>Lynden Projects</b>							
Central Guide Meridian Sewer Service	West Lynden Commercial Area	Extension of sewer infrastructure to area fronting SR 539 and bounded by Front Street on the south and Meadow Lane to the north. Sewer would be extended north from West Front and cross Guide Meridian Road (SR 539) to provide service on the west side. This work should be coordinated with the WSDOT Connecting Washington-funded widening of SR 539 north of Front Street.	Public Works, Economic Development	950,000	EDI; City Sewer Utility Funds; Other Federal, State and local funds	Yes	Yes

**Whatcom County CEDS 2021-2025***Prepared by the Port of Bellingham's economic development division*

West Main Street Improvements (Phase 2)	West Lynden	Reconstruct existing 20-foot roadway to an industrial street standard including curbs, gutters and sidewalks as well as utilities (water and storm drainage). Also, culvert and bridge replacement for an existing, uninhabited drainage ditch. Construction of a roundabout at the intersection with Berthusen Rd is a STP-R program partially funded project for 2022.	Public Works	2,300,000	EDI; STP-R; Transportation Impact Fees; Federal, State and other local funds	Yes	Yes
West Front Street All-Weather Arterial Street Improvements	West Lynden	Reconstruct West Front Street between Tromp Road and Duffner Drive. This project will construct West Front as an all-weather industrial-standard street complete with curbs, gutters and sidewalks. Minor utility upgrades including water, sanitary sewer and stormwater conveyance are included to allow for the continued growth of Lynden's industrial area. This improved road will provide industrial properties with all-weather truck access to State Route 539, Birch Bay-Lynden Road and I-5 to the west.	Public Works	3,286,000	EDI, TIB, TBD, Other Federal, State and Local funds	Yes	Yes
City Wayfinding Signage / Branding project	Main travel corridors and trailways	Sign fabrication and installation of Lynden's portion of Whatcom County's regional wayfinding plan created by the Merje consulting group in cooperation with the Bellingham Whatcom County Tourism Office.	Planning	150,000	EDI, TBD, TAP, City General Fund	Yes	Yes

**Whatcom County CEDS 2021-2025***Prepared by the Port of Bellingham's economic development division*

Tromp Road & Alderwood extension	West Lynden	New construction of Tromp Road a north-south connection between Birch Bay-Lynden Road and the eastern extension of Alderwood (a short east-west connection on the south side of the Preferred Freezer facility) to link to Main Street via Curt Mayberry Street. This project will include an industrial-standard street complete with curbs, gutters and sidewalks. All utilities, including water, sanitary sewer and stormwater are already in place. This project will connect the northern industrial area to Birch Bay-Lynden Road, providing safe and efficient access to State Route 539 and I-5.	Public Works, Economic Development	5,250,000	EDI, TIB, TBD, and other Federal/State/Local funds	Yes	Yes
South Guide Meridian Road Sewer Service	West Lynden Commercial Area	Extension of sewer infrastructure to area fronting SR 539 and bounded to the south by the City limits; to the east by Fishtrap Creek, and; to the west by an extension of Berthusen Road, south of Birch Bay-Lynden Road. The west basin (west of SR 539) encompasses approximately 153 acres, and the east basin another 93 acres. A Port of Bellingham study prepared in 2015 identified preferred solutions.	Public Works, Economic Development	3,000,000	EDI; City Sewer Utility Funds; Other Federal, State and Local funds	Yes	Yes

**Whatcom County CEDS 2021-2025***Prepared by the Port of Bellingham's economic development division*

Downtown Parking - Old Water Treatment Plant Site	Lynden's Downtown Historic Business District (HBD)	The Lynden Downtown HBD has seen an exciting rejuvenation in recent years, and parking is at a premium. The old water treatment plant was demolished in 2019 following the construction of the new plant further to the south. This vacant site is available for redevelopment as an employee parking area or structure. This project has been requested by the Downtown Business Association.	Public Works, Economic Development	1,250,000	EDI, TBD, TAP, City General Fund	Yes	Yes
Judson Service Alley Reconstruction and Widening	Lynden's Downtown Historic Business District (HBD)	Reconstruct and widen the alley running behind (south of) the businesses located on Front Street. This alley provides critical access for delivery/service and emergency vehicles to HBD businesses. This project would include undergrounding of overhead utilities which obstruct view and hinder access. Private utility revisions.	Public Works, Economic Development	1,600,000	EDI, TIB, TBD, Other Federal/State/Local funds	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Pepin Creek Main Street Bridge	Lynden UGA	This project will construct a new bridge on Main Street and fish stream below to allow for relocation of year-round water flowing in north-south deep roadside ditches along Double Ditch Road to a newly constructed channel halfway between the Benson and Double Ditch roads. This will allow City re-construction of Double Ditch Road to arterial standards. It will also better protect existing neighborhoods from flooding events and provide improved habitat for ESA listed fish.	Public Works	3,000,000	EDI; Transportation Impact Fees; TBD; Federal, State and other local funds	Yes	Yes
<b>Nooksack Projects</b>							
Garfield Force Main Extension	Nooksack	Extend the force main from the Garfield sewer pump station to Pump Station No. 4 in Everson.	Public Works	1,000,000	City Sewer fund, PWTF	No	Yes
<b>Nooksack Indian Tribe Projects</b>							
Nooksack Tribal Health Clinic	Nooksack Unincorporated Tribal Lands / Unincorporated Whatcom County	Development of a Tribal Health Clinic that includes dental services	Public Health, Economic Development, Public Works	25,000,000	EDI, P3 Partnership, Tribe, BIA, EDA Disaster - COVID	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Hwy 542 & Deming Road Roundabout	Nooksack Unincorporated Tribal Lands / Unincorporated Whatcom County	Construct roundabout	Nooksack Tribal Transportation Program, Economic Development, WADOT	1,500,000	BIA, Federal, State, County	No	Yes
Nooksack Wellness Program	Nooksack Unincorporated Tribal Lands / Unincorporated Whatcom County	Expansion of mental health and substance recovery services.	Public Health, Economic Development, Public Works	6,000,000	EDI, P3 Partnership, Tribe, BIA, EDA Disaster - COVID	Yes	Yes
Nooksack Rural Broadband	Nooksack Unincorporated Tribal Lands / Unincorporated Whatcom County	Construction and Expansion of rural broadband	Nooksack Tribe, IT, Economic Development, RedLine Communication	7,200,000	(NTIA) U.S. Dept. of Commerce	No	Yes
<b>Port of Bellingham Projects</b>							
Rural Broadband Construction Project	Whatcom County	Construction and expansion of rural broadband network	Public Works, Economic Development	20,000,000	CERB, Whatcom County EDI, federal, state, local, WA State Broadband office, Port	Yes	Yes

**Whatcom County CEDS 2021-2025***Prepared by the Port of Bellingham's economic development division*

Mooring Improvements to Bellingham Shipping Terminal	Bellingham Shipping Terminal	Design and construct new mooring dolphins and fendering system.	Public Works	12,000,000	Federal, state, port	No	Yes
Marine Trades Area Travel Lift	Bellingham Waterfront District	Develop boat haul out / travel lift on the northside of the Whatcom Waterway with a private partner. Feasibility, design, and construction.	Public Works	2,000,000	Federal, state, port; Whatcom County EDI	Yes	Yes
Mt Baker Products Peninsula Improvements	Bellingham Squalicum Waterfront	Provide infrastructure on a 4.5 acre industrial site behind Mt Baker Products to support new marine trades activity	Public Works	2,000,000	Federal, state, port; Whatcom County EDI	Yes	Yes
Schultz Way Improvements	Bellingham Squalicum Waterfront	Reconstruct Port-owned Schultz Way road to city standards as a secondary arterial, serving existing port tenants and extending it to the Mt Baker Products peninsula to serve new tenants.	Public Works	2,500,000	Port; State; Federal; Whatcom County EDI	Yes	Yes
Marine Highway Port designation for the Bellingham Shipping Terminal and preparation of facilities to service resulting in "short sea" routes	Bellingham Shipping Terminal	Achieve MARAD status as a terminal point on the Pacific M-5 Maritime Highway Route and make necessary repairs and reconfiguration to the BST "Rail Span," allowing it to handle barge calls and resulting inbound and outbound cargo flow.	Public Works	5,100,000	\$4.7 million grant application in with MARAD, Port	No	Yes
Airport Industrial Park Infrastructure Improvements	Bellingham Airport Industrial Park	Infrastructure improvements to the 18 acres of immediately buildable property in the AIP to support business expansion and attraction.	Public Works	2,500,000	Port; State; Federal; Whatcom County EDI	Yes	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Visitor Moorage at GP Pier	Bellingham Waterfront District	Dock and moorage system in the Whatcom Waterway to serve visiting commercial and recreational boaters, improve water access and stimulate local spending.	Public Works	1,000,000	Port; State; Federal; Whatcom County EDI	Yes	Yes
Alcohol Plant Renovation	Bellingham Waterfront District	Renovate historic former GP ethyl alcohol plant for commercial uses.	Public Works	14,000,000	Port; State; Federal; Whatcom County EDI	Yes	Yes
Fishers Pavillion	Bellingham Squalicum Harbor	Construct covered area to store/repair fishing gear, provide a fresh seafood market and host marine trades and community events.	Public Works	1,100,000	Port; State; Federal; Whatcom County EDI	Yes	Yes
Blaine Wharf District Marine Industrial Area	Blaine Harbor	Infrastructure improvements to support facilitate for boat haul-out, storing/repairing fishing gear, fish processing upland boatyard/small boatyard expansion.	Public Works	5,000,000	Port; State; Federal; Whatcom County EDI	Yes	Yes
Bellingham Shipping Terminal Repower	Bellingham Shipping Terminal	Power and broadband upgrades to the Bellingham Shipping Terminal warehouses.	Public Works, Economic Development	3,038,169	Port, Federal	No	Yes
Bellingham Shipping Terminal Pier Rehab	Bellingham Shipping Terminal	Repairs and rehabilitation of the main BST pier.	Public Works, Economic Development	5,686,990	Port, Federal, MARAD, PIDP FY20 grant	No	Yes
Bellingham Shipping Terminal Dredging	Bellingham Shipping Terminal	Dredging and under dock realignment needed in order to serve larger ships.	Public Works, Economic Development	5,323,850	Port, Federal, MARAD, PIDP FY20 grant	No	Yes
Rail Spur Reconnection	BST Log Pond	Port tenant plans to reconnect the BST Log Pond to the BNSF main line via a newly reconfigured rail spur. Supported by the Port but subject to BNSF approval.	Public Works, Economic Development	7,500,000	Private	No	Unclear

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Waterfront Fiber	Bellingham Waterfront District	Finish incomplete Roeder Ave conduit to Waterfront Development (all intersections), after completion install fiber to Waterfront, build a small ISP room	Public Works, Economic Development	3,000,000	Port, State, Federal, Whatcom County EDI	Yes	Yes
Airport Fiber upgrades	Bellingham International Airport	Install conduit to west side of Airport runway for future development	Public Works, Economic Development	1,000,000	Port, Federal	No	Yes
Airport utility upgrades	Bellingham International Airport	Install water, sewer, and electric lines on the west side of airport runway for future development. Wetland mitigation may be required.	Public Works, Economic Development	5,000,000	Port, Federal	No	Yes
Shipyard Pier Fender Pile upgrades	Fairhaven Shipyard	Replace fender pile, walers and chocks and upgrade to steel fenders with HDPE sleeves. Plus add 50' of new fender pile walers, chocks and cleats to enhance moorage	Public Works	1,560,000	Port	No	No
FMIP stormwater improvements, including site improvements	Fairhaven Marine Industrial Park	Design & permit FMIP stormwater improvements, including site improvements and seaview flooding (raise site). Construction costs not included until design completed.	Public Works	620,000	Port	No	No
Fit-up float	Central Waterfront	Non-exclusive Fit-up Float in I&J Waterway	Public Works	1,251,000	Port	No	No
PUD #1							

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Utilities infrastructure	Various areas, rural Whatcom County	Construct utility infrastructure to support commercial and industrial development, and job creation	Public Works, Economic Development, Job Creation	10,000,000	PUD, Dept. of Commerce, EDI, Private	Yes	Yes
Water supply infrastructure	Various areas, rural Whatcom County	Construct water system infrastructure projects to store, move and use new sources of water to supply water for agriculture, streamflow and municipal purposes	Public Works, Economic Development, Ecosystem Enhancement	30,000,000	Dept of Commerce, dept of Agriculture, private land owners, Dept of Ecology, PUD, EDI	Yes	Yes
Alternative and renewable energy, water conservation, water reuse	Agriculture operations, dairy farms	Working with dairies and other agricultural operations, develop waste-to-energy and waste-water reclamation projects for electric, gas and clean water production	Renewable Resources, Economic Development, Public Works, Ecosystem Rehab	5,000,000	PUD, Dept. of Ecology, Dept. of Commerce, Private, EDI	Yes	Yes
Electric utility infrastructure	Western Whatcom County	Construct electric service infrastructure to support commercial and industrial development	Public Works, Economic Development	30,000,000	PUD, Dept. of Commerce, Private, EDI	Yes	Yes
Renewable energy	Various areas of Whatcom County	Construct various types of renewable energy facilities including solar, wind and alternative renewable fuels productions	Public Works, Economic Development, Energy	10,000,000	PUD, Dept. of Commerce, Private, EDI	Yes	Yes
Telecommunications	Rural Whatcom County	Construct fiber optics and other communication system infrastructure to support economic development, public safety, health systems, and educational systems	Public Works, Economic Development, Public Safety, Public Health, Education	20,000,000	Dept of Commerce, State Broadband office, Federal Broadband funding, CERB, Port of Bellingham, PUD, EDI	Yes	Yes
<b>Sumas</b>							

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Howard Bowen Event Complex	Sumas	Demolish existing grandstand and replace it with a new 3,500-spectator grandstand and arena area. Project also includes restrooms, concessions, retractable stage, parking, relocation of two baseball diamonds and development of a new soccer field.	Public Works, Economic Development	2,975,000	State and Local funds, EDI	Yes	Yes
Regional Recreational Facility Enhancements	Sumas	Replace bleachers at Sumas Rodeo Grounds and associated fields. Upgrade existing facilities and lighting.	Public Works	700,000	State Grant; Washington Wildlife & Recreational Program	Yes	Yes
Truck Bypass	Sumas	New road alignment for trucks seeking to utilize the industrial areas of Sumas and the international border crossing.	Public Works	8,100,000	Motor Vehicle Fuel Taxes; Vehicle Registration Fees; Other Federal, State and Local Funding Sources	Yes	Yes
Sumas Avenue Reconstruction	Sumas	Reconstruct Sumas Avenue from Front Street to Garfield Street.	Public Works	2,300,000	STP; City Street Fund	No	Yes
Cherry Street (SR 9) Bridge Replacement	Sumas	Replace Cherry Street bridge to remove blockage to flow of floodwaters and increase capacity on the State highway.	Public Works	3,000,000	STP; BRAC; FEMA Hazard Mitigation Grant	Yes	Yes
<b>Whatcom Council of Governments</b>							
Whatcom Smart Trips	Whatcom County	Funding for countywide program to reduce travel demand through the use of walking, bicycling, carpooling and transit.	Economic Development	100,000	Federal, State and local funds	Yes	Yes

# **Whatcom County CEDS 2021-2025**

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International Mobility and Trade Corridor Program (IMTC)	Whatcom County, State of Washington, British Columbia, Canada and U.S.	Funding for IMTC, a coalition of U.S. and Canadian government and business entities that identifies and promotes improvements to mobility and security for the four border crossings that connect Whatcom County and the Lower Mainland of British Columbia.	Planning	100,000	Federal, State and local funds (IMTC has received funding from the Province of British Columbia and the Canadian federal government to provide local matching funds for U.S. federal grants)	Yes	Yes
<b>Whatcom County</b>							
Courthouse exterior	Whatcom County Courthouse	Repair failing roof and exterior	Public Works	6,000,000	EDI, REET I	Yes	Yes
State Street remodel	1500 North State Street	Remodel for reorganization	Public Works	5,500,000	EDI / State Street Fund	Yes	Yes
Civic Center remodel	322 N. Commercial Street	Remodel for reorganization	Public Works	7,700,000	Civic Center Fund	No	Yes
Girard Street repair	509 Girard Street	Repair and upgrade building	Public Works	511,000	EDI	Yes	Yes
New Jail	Whatcom County	Construct new jail	Public Works, Public Safety	87,000,000	Bonds	No	Yes
New Sheriff's Office	Whatcom County	Construct new Sheriff's office	Public Works, Public Safety	13,000,000	REET I	No	Yes
Existing jail remodel	Public Safety Building	New dayholding facility, life and safety improvements	Public Works, Public Safety	7,000,000	General Fund	No	No
Affordable Housing and Child Care	Forest St. Annex, 1000 North Forest St.	Construct Affordable Housing and Child Care	Public Works	20,000,000	EDI, Capital Funds, Grants	Yes	Yes
Whatcom County Emergency Operations Center Building	Whatcom County	Office space improvement	Public Works, Public Safety	150,000	REET I	No	No

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

South Fork Park Development	Whatcom County	Bridges and trail development	Public Works, Parks & Rec, Tourism	1,050,000	REET II, Park Improvement Fund, state grant	No	Yes
Birch Bay Beach Park Development	Whatcom County	Construct new waterfront park	Public Works, Parks & Rec, Tourism	4,750,000	REET II, EDI, capital funds, federal, state, local grants	Yes	Yes
Plantation Range HVAC and Roof	Plantation Range	Replace HVAC and roof, make improvements to building	Public Works	1,070,296	REET I, REET II, EDI, state grant	Yes	Yes
Silver Lake Park Improvements	Silver Lake Park	Utilities, road, day-use area, campground, restroom improvements	Public Works, Parks & Rec, Tourism	7,772,000	REET II	No	No
Emergency Management Radio System	Whatcom County	Whatcom County Integrated Public Radio Network Project builds a public safety radio system for use by all first responder agencies in Whatcom County, its political subdivisions, and interoperability with regional partners.	Public Works, Public Safety, Telecommunications	6,000,000	\$1 million invested, REET I, EDI, state and federal grants	Yes	Yes
Nesset Farm House Restoration	Nesset Farm	Restore historical home, restroom	Public Works, Parks & Rec, Tourism	690,000	Nesset Foundation	No	No
Lake Whatcom Trails	Lake Whatcom Park	Trail development	Parks & Rec, Tourism	4,000,000	REET II, state grant, donations	No	Yes
East Whatcom Regional Resource Center expansion project	Kendall	Expand facility to include food bank distribution center and additional multiuse space	Public Works	2,300,000	REET I, state grants	No	Yes
Selder Road	Birch Bay	Drainage improvement	Public Works	110,000	BBWARM, REET I	No	Yes
Smith Road / Northwest Road roundabout	Whatcom County	Install roundabout	Public Works	5,000,000	Road Fund	No	Yes

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Canyon Lake Community Forest	Whatcom County	Access road repair	Public Works, Parks & Rec, Tourism	135,000	REET II	No	No
Lake Whatcom Park	Lake Whatcom Park	Construct trailhead and amenities, including parking, shelter, restrooms	Public Works, Parks & Rec, Tourism	2,305,000	REET II, state grants	No	Yes
Birch Bay Drive Pedestrian Facility	Birch Bay Drive	Construct a 1.58 mile berm to provide soft-shore erosion protection, habitat enhancement, and to encourage pedestrian use along Birch Bay Drive	Public Works, Parks & Rec, Tourism	13,000,000	REET II, BBWARM, Road Fund, Flood Fund, federal grant	No	Yes
BBWARM Harborview Road	Harborview Road	Culvert replacement	Public Works	2,400,000	BBWARM, REET II, Road Fund	No	Yes
BBWARM Lora Lane	Birch Bay	Drainage and water quality improvement	Public Works	2,100,000	BBWARM, REET II	No	Yes
LW Wooldridge/Hillsdale	Lake Whatcom	Drainage and water quality improvement	Public Works	2,100,000	LWSU, REET	No	Yes
Eagle Ridge/Austin Ct	Lake Whatcom	Drainage and water quality improvement	Public Works	1,200,000	LWSU, REET	No	Yes
Sudden Valley stormwater	Sudden Valley	Drainage and water quality improvement	Public Works	565,000	LWSU, REET II	No	Yes
Sudden Valley stormwater	Lake Whatcom	Stormwater improvements	Public Works	640,000	REET II	No	Yes
Relocate morgue	Whatcom County	Relocate and replace morgue	Public Works	2,000,000	REET	No	Yes
NW Annex	Whatcom County	Building replacement	Public Works	8,388,000	EDI	Yes	No
Maple Falls Park & Trail Corridor	Maple Falls Park	Construct restrooms, parking, trail improvements	Public Works, Parks & Rec, Tourism	900,000	REET II, state grants	No	Yes
Lighthouse Marine Park Launch	Point Roberts	Repair boat launch (2018 storm damage)	Public Works, Parks & Rec, Tourism	50,000	REET II	No	No

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

Hovander Park Farm Animal Exhibit	Hovander Park Homestead	Reconstruct farm animal exhibit	Public Works, Parks & Rec, Tourism	240,000	REET II, donations	No	No
Hovander Park Roadway & Access Improvements	Hovander Park Homestead	Road and parking lot improvements	Public Works, Parks & Rec, Tourism	2,430,000	REET II, state grants	No	Yes
Hovander Park & Tenant Lake Sign Improvements	Hovander Park Homestead	Destination and wayfinding signage to Whatcom County Park attractions	Public Works, Parks & Rec, Tourism	100,000	EDI, City of Ferndale	Yes	No
Birch Bay-Lynden Road / Blaine Road Intersection	Whatcom County	Construct roundabout	Public Works	4,300,000	Road Fund, federal grant	No	Yes
Pavement Rehabilitation	Whatcom County	Replace arterial road surfaces on four commercially important routes.	Public Routes	6,500,000	Road Fund, state or federal pass through	No	Yes
Marine Drive Bike & Pedestrian Facilities-Phase 2	Whatcom County	Improve bicycle and pedestrian safety between Locust and Alderwood; improve recreational access	Public Works	3,000,000	Road Fund, EDI, state or federal grant	Yes	Yes
Slater Road / I-5 Interchange improvements	Slater Road	Construct five roundabouts on Slater Road at its intersections with Northwest Road, Pacific Highway, northbound and southbound 1-5 on ramps, Rural Avenue to improve channelization and stop control	Public Works	30,000,000	Federal, state, local funds; developer contributions	No	Yes
Ferry System Modernization and Preservation	Gooseberry Point	Replace obsolete ferry and upgrade terminals	Public Works	40,000,000	fare surcharge, Road Fund, bonds, CRAB, state budget, federal BUILD grant, federal Ferry Boat Program	No	Yes

# **Whatcom County CEDS 2021-2025**

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Birch Bay Vogt Community Library	Birch Bay	Construct building, parking	Public Works, Parks & Rec, Tourism	3,000,000	EDI, REET I	Yes	No
Hovander Maintenance Building	Hovander Park Homestead	Construct maintenance building	Public Works, Parks	275,000	EDI, REET II	Yes	No
Hovander Maintenance Building	Hovander Park Homestead	Construct maintenance building	Public Works, Parks	275,000	EDI, REET II	Yes	No
Wayfinding Project	Whatcom County	Countywide signage project	Economic Development	2,754,000	EDI, LTAC	Yes	Yes

## **7. Lummi Nation CEDS Project List 2021 Update**

Project Name	Location	Description of Project	Project Type	Estimated Cost	Potential Funding Source(s)
<b>Lummi Nation   Lummi Indian Business Council</b>					
<b>Government Projects</b>					
<u>Health:</u>					
Lummi Tribal Health Clinic	Lummi	A new medical clinic for the Lummi community is of the highest priority to support the expansion of health care services for the growing population.	Tim Ellis	\$38,500,000	USDA Loan
Detox Center	Lummi	LIBC declared a public health crisis in 2017 to end illegal drug use on the reservation in response to the impact of the opioid epidemic. The development and construction of a medical detox center, a necessary service. A 17,400 sf building is proposed.	General Mgr LTHC Director BH Director Council	\$10,230,264	WA Dept of Health Behavioral Health \$1,960,000 + 3 <sup>rd</sup> Party Billing
Methadone Clinic	Lummi	A methadone clinic is a place where a person who is addicted to opioid-based drugs, such as heroin or prescription painkillers, can receive medication-based therapy. Patients receive Methadone, or the brand name version known as Dolophine, which is an opioid analgesic.	Rene Ramirez	\$1,253,242.00	3 <sup>rd</sup> Party Billing
Solar/Renewable Energy	Lummi	Construct solar on rooftop and geothermal of the NEW Lummi Tribal Health Center	Economic Development Planning	\$1,300,000	DOE – Energy Infrastructure

**Whatcom County CEDS 2021-2025**

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			Public Works Health		Deployment on Tribal Lands
<u>Education:</u>					
Lummi Nation School	Lummi	<ul style="list-style-type: none"> <li>-renovate the LNS bldg. to add lighting and other amenities needed by Special Education Students</li> <li>-classroom space for K-1, Lummi Cultural Arts &amp; Lummi Language Arts, Indigenous Plants Nursery, Career Technology Education, Marine Trades Program, Health Classes, Physical Therapy, Sports Medicine</li> <li>-Expanded Comprehensive School Based health Services Examination Rooms, Counseling Rooms, Family Therapy Conference Room, Dentist, Dental Hygienist Exam Room</li> <li>-add Locker Room for co-curricular, extra-curricular sports</li> <li>-add expanded bleachers, public address system at Blackhawk Stadium</li> <li>-add six USTA Tennis Courts, lighted – and used for pickle ball, paddle ball</li> <li>-add Cross Country Trail Course around school campus</li> <li>-Security Guard shack with web enabled gate</li> <li>-Two baseball, two softball fields, lighted</li> <li>-Lighted sidewalk connecting McKenzie Housing with LNS and Little Bear Creek Facilities</li> <li>-Lummi Education Board Room, Administration Office</li> </ul>	Bernie Thomas	TBD	TBD
<u>Natural Resources:</u>					
Skookum Creek and Lummi Bay Hatcheries Infrastructure Projects	Lummi	Hatchery Infrastructure Improvements to implement the Lummi Co-Manager agreed 10 year hatchery production plan per LIBC RESO 2015-042 to provide an increase in harvestable salmon to the Lummi community.	LNR Dept	\$ 3,343,953	EDA- ARPA Indigenous Communities
Lummi Bay Shellfish Hatchery	Lummi	Shellfish hatchery infrastructure improvements to modernize shellfish operations and rehabilitate the Lummi Bay dike.	LNR Dept Others	\$4,665,323	EDA- ARPA Indigenous Communities

**Whatcom County CEDS 2021-2025**

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		<ul style="list-style-type: none"> <li>• FLUPSY House for FLUPSY Operation: \$2,960,760</li> <li>• New Clam Plant Building: \$846,563</li> </ul> Phase II of FLUPSY Floats improvement: \$858,000			
<u>Workforce Development:</u>					
Entrepreneurship Assistance	Lummi	A place that provides instruction, training, technical assistance, counseling needs and support services to new and aspiring entrepreneurs.		TBD	
Communication Platform	Lummi			TBD	
<b>Government infrastructure</b>					
<u>Water:</u>					
Water Treatment Plant Upgrade	Lummi	Phase I costs include design cost, construction cost, construction phase engineering, and administration cost	Planning LTSWD	\$13,027,000	
I-5 Utilities – Water & Sewer	Lummi	Water line extension from the LTSWD lines located at the corner of the Silver Reef Casino to the Salish Village Site at I-5. Feasibility Study needed.	Planning LTSWD LCC	\$7,000,000	EDA ARPA Build Back Better
SCADA for ATP & NW Wells (Water)	Lummi	SCADA is a computer-based system for gathering and analyzing real-time data to monitor and control equipment	LTSWD	\$85,000	
<u>Sewer:</u>					
Biosolids Site – Chief Martin	Lummi	The LIBC recognizes that the Lummi Tribal Sewer & Water District's current BioSolids 39-acre site is near capacity and requires a 51 acres site to accommodate growth in the community, and up to 71 acres by 2038. The installation of solar panels in the 100-foot buffer zone around the entire site will be considered. <i>LIBC Reso 2020-129</i>	LTSWD Public Works Planning Economic Development	\$1,600,000  \$175,000 Annually	

**Whatcom County CEDS 2021-2025**

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Membrane Project – Kwina Road MBR WWTP	Lummi	District staff discovered that 25% of the membranes installed in 2017 were damaged and are halfway through the warranty period of 8 years as stipulated by the contract. Most of the membranes damaged beyond repair. Ovivo USA LLC was notified of the warranty claim and has offered a replacement and cost reduction after negotiations between Ovivo and the District engineers and legal counsel.	LTSWD	\$1,000,000	
LTSWD Administration Bldg	Lummi	Managing and operating a small water and sewer system is a big responsibility and investment in a new Administration Headquarters building is necessary.	LTSWD	\$275,000	
Update W&S Facilities Plans (Water & Sewer)	Lummi		LTSWD	\$150,000	
Pump Station 9 (Sewer)	Lummi		LTSWD	\$825,000	
SCADA for 5 Sewer Pump Stations (Sewer)	Lummi	SCADA is a computer-based system for gathering and analyzing real-time data to monitor and control equipment	LTSWD	\$150,000	
Conveyance from pumpstation 10 to Gooseberry WW Facility	Lummi		LTSWD		
<u>Roads:</u>					
Slater Road Elevation and Bridge Project	WA, Whatcom County, Lummi, Ferndale	The Road and Bridge project investment will have significant transportation and economic impacts. Elevation of Slater Road, 1,900 linear feet of roadway, 12 feet above the flood stage, between the Nooksack River bridge and the BNSF Railroad tracks; and replace outdated bridge carrying Nooksack River flows under the roadway with a new bridge span.	Economic Development, Planning, Public Works	\$15,000,000 (road elevation) + Bridge (\$TBD)	<a href="#">EDA – Disaster</a>
I-5 Slater Interchange	WA, Whatcom County, Port of Bellingham, Ferndale, Lummi	Construct on/off ramp roundabouts along I-5 at exit 260 where they intersect Slater Road. Traffic studies show the surrounding interchange will experience more traffic due to rapid growth in the area within the next decade.	<a href="#">WSDOT</a> Lummi	\$21.1 million	<a href="#">WSDOT Connecting Washington Transportation Package</a>

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Chief Martin Road	Lummi	Infrastructure updates to electricity, water, sewer and paving estimate	Planning Public Works	\$4,204,985	EDA ARPA Build Back Better
Roundabout at Kwina, Lummi Shore Rd, and Marine Dr.	Lummi	Construction of a roundabout to replace 4 minor stop controlled intersections which have 8 deficient left turn movements.	Planning Public Works	\$5,200,000	U.S. Federal Highway Admin STBG \$4,500,000 + 31% Match
Lummi Shore Road Pedestrian Path – Kwina Rd to Haxton Way	Lummi	The project consists of construction of 5070 linear feet of pedestrian improvements along the south/west side of Lummi Shore Drive, constructed within the roadway easement between Kwina Road and Haxton Way and includes replaces ditches with storm sewer conveyance system, road widening and illumination. The purpose of the proposed pedestrian path is to address safety concerns and to provide safe pedestrian access to Haxton Way from the vicinity of the Northwest Indian College and tribal facilities on Kwina Road. The current roadway has a limited shoulder width and pedestrians have no separation from vehicular traffic. Vehicles often travel at a high speed along this section of roadway. Visibility is especially difficult at night due to a lack of street lighting and rural conditions.	Planning Public Works	\$2,700,000	
<u>Broadband:</u>					
Broadband/Telecommunications	Lummi	Construction, improvement of facilities and equipment needed to provide high-speed internet to residents of the Lummi Nation. Our proposed fiber-to-the-home (FTTH) project will place 31.25 miles of backbone fiber and 24.96 miles of distribution fiber for a total of 56.21 miles of fiber that will serve 2,359 homes, anchor institutions and businesses throughout the reservation.	Economic Development, Planning, IT, Public Works, Education Health	\$17,390,000	NTIA TBC Program - Broadband Infrastructure Deployment Grant

**Whatcom County CEDS 2021-2025**

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Broadband/Telecommunications	Lummi	The Lummi Reservation is 2500 square miles and a variety of diverse terrain and demographics. The grant would formulate a plan that improves telemedicine capacity on the reservation to maintain physical and mental healthcare services; greater retention and creation of tribal teachers by accelerating learning and degree attainment in high school; and to accommodate culturally relevant and tribe-specific needs as well as maintain school courses during COVID19 pandemic.	Economic Development, Planning, IT, Public Works, Education Health	\$809,734	NTIA TBC Program – Broadband Use and Adoption Grant
Broadband – Lummi Networks Building	Lummi	The Lummi Networks telecommunications project involves the installation or construction of a new structure of a wireless telecom facility.	Economic Development, Planning, IT, Public Works	TBD	TBD
Wayfinding Signage	Lummi	Establish a coordinated system of wayfinding signs for the purpose of guiding visitors, residents and businesses to their destinations (and other points of interest) within the Lummi reservation and the surrounding area. Coordinated wayfinding systems enable jurisdictions to improve traffic circulation, create a sense of place, improve the characterization of sub-areas and districts within a community, and reduce sign blight. As proposed, the Tribe would establish a series of signs throughout the reservation that will provide directions to points of interest within the reservation. As part of this program a variety of existing signs would be removed and consolidated into the proposed wayfinding program. The Lummi Nation expects to coordinate with Ferndale, Lummi Island, Whatcom County, private businesses and the general public to identify important destinations within the Ferndale area and to development variations from the central theme of the wayfinding program.	Economic Development, Planning, Public Works	\$50,000	Local funds, REET, EDI

**Whatcom County CEDS 2021-2025**

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Solid Waste Management • Refuse Site Sanitation and Recycling	Lummi	In 2002 the Solid Waste Management Project was created to address illegal solid waste dumping on the Lummi Indian Reservation. The LIBC initially fully funded this effort until U.S. EPA funding was obtained to help support the effort. As a result a total of 565 tons of solid waste, nearly 215 appliances, nearly 500 tires, and over 70 abandoned vehicles have been removed and disposed of at an off-reservation licensed transfer station. Since then, the project went to the wayside and it is the desire of LIBC to reimplement the program. There are approximately 1966 households that could be served, plus government facilities.		\$130,000 equipment	
Propane	Lummi	Since the majority of Tribal homes are heat sourced by propane, it is the desire of the LIBC to provide propane services to Tribal residents.			
Chief Martin Road – Engineering, Utilities and Paving	Lummi	Electricity, Water, Sewer and Paving Estimate	Planning	\$4,204,985.00	
<b>Enterprise Investments</b>					
<u>Business Cluster: Salish Village</u>					
Phase 2: I-5 Development West – 5 Outpads	Lummi	Engineering, Construction drawings – grading, drainage, underground utilities, pads, parking, stormwater	Tim Ballew, LCC	\$1,715,000	EDA ARPA Build Back Better
Phase 3: I-5 Development East	Lummi	Wetlands Delineation, mitigation plan, biological assessment, stormwater, permitting, retention pond, construction drawings – grading, drainage, underground utilities, pads, parking, stormwater, site work	Tim Ballew, LCC	\$3,285,000	EDA ARPA Build Back Better
I-5 Utilities – Water & Sewer	Lummi	Feasibility Study done? Pipe it in from our LTSWD lines to the corner of I-5. Water line extension.	Planning LTSWD LCC	\$7,000,000	EDA ARPA Build Back Better
Marijuana Store	Lummi	Modifications to the site previously occupied by the 260 Tobacco and Fine Spirits.	Economic Development	\$2,000,000	TBD
<u>Business Cluster: Gooseberry Point</u>					

**Whatcom County CEDS 2021-2025**

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Gooseberry Point Commercial Site Plan – the Working Waterfront	Lummi, Whatcom County	The Working Waterfront will improve maritime transportation through the development of maritime and surface transportation connections and facilities supporting the movement of people, goods, and vessels to/from and within Fisherman's Cove on Gooseberry Point in the Lummi Indian Reservation.	Planning LCC Economic Development		TIGER Grant EDA Build Back Better
<u>Business Cluster: Legoe Bay</u>					
Legoe Bay Property Plan	Lummi, Whatcom County	Legoe Bay on Lummi Island was the original site of the Lummi School of Aquaculture. Replacing the former dock at Legoe Bay is the necessary first step in revitalizing the site.	Planning Economic Development LCC		EDA Build Back Better
<u>Business Cluster: Kwina Corridor</u>					
Technology Training Center	Lummi	A digital equity program for seniors, unemployed residents, those experiencing homelessness, residents who face barriers to accessing digital services during this period when there is an increased reliance on the internet to access public services and economic relief resources available in response to and recovery from the COVID19 pandemic.	Economic Development, Workforce Program	\$8,000,000	EDA
Garipee Commons	Lummi	The development along the Kwina Rd Corridor would include multi-family residential, townhomes, commercial real estate and 2 mixed used facilities that are pedestrian friendly.	Planning Economic Development		EDA Build Back Better
NWIC Health & Wellness Center					
Roundabout at Kwina, Lummi Shore Rd, and Marine Dr.					
Lummi Tribal Health Center	Lummi	A new medical clinic for the Lummi community is of the highest priority to support the expansion of health care services for the growing population.	Tim Ellis	\$38,500,000	USDA Loan
Swimming Pool	Lummi	25 yd x 50 yd	Planning Public Works	\$2,900,000	EDA ARPA

**Whatcom County CEDS 2021-2025**

*Prepared by the Port of Bellingham's economic development division*

			Econ Dev		Travel, Tourism & Outdoor Recreation
Transit Facility	Lummi	Transit Parking Lot Design and Bus Barn	Planning Public Works	\$2,300,000	TBD
Lummi Shore Road Pedestrian Path	Lummi	The project consists of construction of 5070 linear feet of pedestrian improvements along the south/west side of Lummi Shore Drive, constructed within the roadway easement between Kwina Road and Haxton Way and includes replaces ditches with storm sewer conveyance system, road widening and illumination. The purpose of the proposed pedestrian path is to address safety concerns and to provide safe pedestrian access to Haxton Way from the vicinity of the Northwest Indian College and tribal facilities on Kwina Road. The current roadway has a limited shoulder width and pedestrians have no separation from vehicular traffic. Vehicles often travel at a high speed along this section of roadway. Visibility is especially difficult at night due to a lack of street lighting and rural conditions.	Planning Public Works	\$2,700,000	TBD
<u>Business Cluster: Haxton Way</u>					
Silver Reef Casino		Modifications to service due to COVID-19 – including food and beverage, Reef Rewards Program mobile app, and eventually sports wagering			
<b>Misc Developments</b>					
Residential Housing Plan	Lummi	Proposed activities of the Lummi Housing Authority, see 2021 Housing Plan	Lummi Housing Authority	\$5,658,870	NAHASDA IHBG, LIBC, Grants, Program
Housing Assistance	Lummi				
Elder Housing	Lummi				

# **Whatcom County CEDS 2021-2025**

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Hospice Home	Lummi	Renovation of the Boynton House at Point Francis		\$1,000,000	TBD
Women's Home for CARE	Lummi				
Alternative Living	Lummi	Sexual Offenders, Safe community			Dept of Corrections
Lummi B&G Club – Addition of 2 gyms	Lummi	Swimming pool?		Albert Toby may know a source	
Shaker Church	Lummi				
Multi-Purpose Community Bldg Scott Rd/Lummi Shore	Lummi				
Stepping Stones/Tiny House Village	Lummi – Eagle Haven site	Lummi Stepping Stones, a tribal non-profit, will manage and operate a tiny house village at the Eagle Haven property. The cottage style homes will be for those individuals experiencing homelessness.	Stepping Stones, Lhaqtemish Foundation, Opportunity Council	\$6,300,000	WA Dept of Commerce State Housing Trust Fund Cottage Communities, LIBC, Misc
Homelessness	Lummi				
Loomis Trail	Lummi	Modifications to service due to COVID-19 – including food and beverage, Reef Rewards Program mobile app, and eventually sports wagering			
Business Park – manufacturing, etc	Lummi				
Foreign Trade Zone #128	Lummi				
Lummi Networks	Lummi				
Museum	Lummi				
Correctional Facility	Lummi	Need a study for the correctional facility – it's been 10 years since we've looked at this project.			
Stommish Facility Upgrades	Lummi	-Maintenance, Repair and upgrades -construction of a lighted basketball court and playground		\$200,000 for playground	
Commodity Foods	Lummi	New Facility – including a dining space for large gatherings and a permanent Port-cochere, west parking lot expansion and paving.			
Tribal Car Fleet	Lummi	Replace GSA vehicles with leasing agreement with Enterprise Rental Car	Planning		

***Whatcom County CEDS 2021-2025***

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Little Bear Creek	Lummi	Facility is currently in need of upgrades/replacements for 2 elevators at \$200K each	Lummi Housing Authority Planning	\$400,000	TBD
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***Whatcom County CEDS 2021-2025***

*Prepared by the Port of Bellingham's economic development division*

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# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-582

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<b>File ID:</b>	AB2021-582	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	09/29/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

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**Attachments:** Proposed Ordinance, Budget Summary, Supplemental Requests

**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
<b>General Fund</b>			
Public Defender	14,487	(41,506)	(27,019)
Non Departmental	397,466	(385,466)	12,000
<b>Total General Fund</b>	<b>411,953</b>	<b>(426,972)</b>	<b>(15,019)</b>
<b>Total Supplemental</b>	<b>411,953</b>	<b>(426,972)</b>	<b>(15,019)</b>

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved ( ) Denied

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

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 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.	<u>12,000</u>	<u>-</u>	<u>12,000</u>
Total General Fund		<u>411,953</u>	<u>(426,972)</u>	<u>(15,019)</u>
Total Supplemental		<u>411,953</u>	<u>(426,972)</u>	<u>(15,019)</u>

## Supplemental Budget Request

Status: Pending

### Public Defender

Suppl ID # 3295

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 

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
	<b>Request Total</b>		<b>(\$27,019)</b>

#### 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

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### Public Defender

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Suppl ID # 3295

**Fund 1**

**Cost Center 2673**

**Originator:** Julie Wiles

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**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

*Satpal Sidhu*

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

### 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.

# 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
	<b>Request Total</b>		<b>\$12,000</b>

### 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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-583

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<b>File ID:</b>	AB2021-583	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	09/29/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Resolution (FCZDBS)		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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.

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## HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee

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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
<b>Birch Bay Watershed &amp; Aquatic Resources Management Fund</b>	<b><u>855,502</u></b>	<b><u>-</u></b>	<b><u>855,502</u></b>
<b>Total Supplemental</b>	<b><u>855,502</u></b>	<b><u>-</u></b>	<b><u>855,502</u></b>

**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:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	7380	Other Improvements	\$855,502
	<b>Request Total</b>		<b>\$855,502</b>

### 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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-593

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<b>File ID:</b>	AB2021-593	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/11/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County to provide COVID-related isolation and quarantine to Island County residents, in the amount of \$200 per resident, per day

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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

## MEMORANDUM

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Island County – COVID Isolation and Quarantine Facility Interlocal Agreement  
**DATE:** August 11, 2021

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

- **Background and Purpose**

This Agreement is in response to a request from Island County to utilize Whatcom County's COVID Isolation and Quarantine Facility. This Agreement outlines mutually agreeable terms that include the daily bed rate and responsibilities for Island County's residents, including maximum stay length and transportation to and from the Facility.

- **Funding Amount and Source**

Island County will reimburse Whatcom County for their residents temporarily housed at the COVID Isolation and Quarantine Facility at a rate of \$200 per person, per day, which is inclusive of the total cost of the room and wrap-around services at the Facility. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

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

<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8510 Health / 851000 Administration	
Contract or Grant Administrator:		Sue Sullivan	
Contractor's / Agency Name:		Island County	
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input type="checkbox"/> No <input type="checkbox"/>
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If No, include WCC: _____	
Already approved? Council Approved Date: _____		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, grantor agency contract number(s): _____		CFDA#: _____
Is this contract grant funded? Yes <input 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? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s): _____		Contract Cost Center: _____
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):  Varies depending on number of Island County residents utilizing Whatcom's Facility.		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
Summary of Scope: The purpose of this agreement is to provide COVID-related isolation and quarantine to Island County residents.			
Term of Contract:	3 Months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 10/01/2021
	2. Health Budget Approval:	KR/JG	Date: 10/11/2021
	3. Attorney signoff:	RB	Date: 10/08/2021
	4. AS Finance reviewed:	M Caldwell	Date: 10/11/21
	5. IT reviewed (if IT related):		Date: _____
	6. Contractor approved:		Date: _____
	7. Submitted to Exec:		Date: _____
	8. Council approved (if necessary):	AB2021-593	Date: _____
	9. Executive signed:		Date: _____
	10. Original to Council:		Date: _____

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
WHATCOM COUNTY  
AND  
ISLAND COUNTY

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

1. PURPOSE: This Agreement outlines terms and conditions for Whatcom to provide COVID-related isolation and quarantine to Island's residents at Whatcom's COVID Isolation and Quarantine Facility.
2. RESPONSIBILITIES:

Whatcom will:

- A. Provide COVID-related isolation and quarantine temporary housing to Island residents at Whatcom's COVID Isolation and Quarantine Facility (Facility) for up to 14 days, unless a positive COVID test results necessitates a stay of longer duration, to be jointly agreed upon by Whatcom and Island staff.
- B. Whatcom will notify Island of any issues related to non-compliance of the Facility Code of Conduct (See Exhibit A) by Island residents receiving temporary housing at Whatcom's Facility.
- C. Provide onsite COVID testing to Island residents at the Facility at the same time that testing is provided to Whatcom County residents at the Facility, when capacity exists to do so.
- D. Include Island staff in its daily Isolation and Quarantine staff meetings when Island residents are at the facility.
- E. Invoice Island on a monthly basis for the previous month's bed rate by the 15<sup>th</sup> of the month following service. Monthly invoices will include a roster of Island residents by day to substantiate the invoice total.

Island will:

- A. Vet all Island residents prior to transport to the Facility utilizing the Byron Referral Form (See Exhibit A) to ensure that guests referred are able to safely stay at the facility and that appropriate agreements are signed by Island residents including the Voluntary Agreement (See Exhibit A) and the Release of Information Agreement (See Exhibit A). Island will not refer any residents who are in a state of detox from chemical dependency or residents who are not able to care for themselves independently in the Facility.
- B. Confirm bed availability and request approval of the referral from the Facility's Onsite Supervisor, prior to transport.
- C. Transport residents to and from Island and Whatcom's Facility.
- D. Reimburse Whatcom at a rate of \$200 per person, per day for Island residents temporarily housed at Whatcom's Facility, per Exhibit B. Payment by Island will be timely if it is made within 30 days of the receipt and acceptance of an invoice and billing information from Whatcom.

- E. In the event that Whatcom does not have capacity to provide onsite COVID testing for Island residents, Island will send a testing team to the Facility to test their residents as needed.
  - F. Check in with Island residents at the Facility daily via telephone for symptom monitoring and other pertinent issues related to their stay at the Facility.
  - G. Return Island residents to Island County for release by Island personnel along with documentation that they were returned to Island County.
  - H. In the event Island is notified of non-compliance to the Facility Code of Conduct by an Island resident staying at Whatcom's Facility, Island will pick up and document the return of the resident to Island County within 12 hours of notification of non-compliance.
  - I. Provide contact information for Island that will be available 24 hours per day, 7 days per week should Whatcom need to notify Island of any issues related to Island residents at the Facility.
  - J. Participate in the daily Isolation and Quarantine staff meetings with Whatcom.
3. TERM OF AGREEMENT: The start date of this Agreement is October 1, 2021, and shall be in effect through December 31, 2021.
4. EXTENSION: This Agreement may be extended by mutual written consent of the parties.
5. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for the administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party:

Whatcom's representative shall be:

Sue Sullivan, Environmental Health Manager  
Whatcom County Health Department  
509 Girard Street  
Bellingham WA 98225  
(360) 778-6026  
[SSullivan@co.whatcom.wa.us](mailto:SSullivan@co.whatcom.wa.us)

Island's representative shall be:

Don Mason, COVID Response Manager  
Island County  
PO Box 5000  
Coupeville, WA 98239  
(360) 678-2316  
[d.mason@islandcountywa.gov](mailto:d.mason@islandcountywa.gov)

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

7. **DEFENSE & INDEMNIFICATION:** To the fullest extent permitted by law, Island agrees to indemnify, defend and hold Whatcom 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 Island, its employees, agents or volunteers or Island's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with Island's performance of this Contract or 3) are based upon Island or its subcontractors' use of, presence upon, or proximity to the property of Whatcom. This indemnification obligation of Island shall not apply in circumstances where the claim, damage, loss, or expense is caused by the sole negligence of Whatcom.

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 Island, its subcontractors, employees or agents, and Whatcom, its subcontractors, employees or agents, this indemnification obligation of Island shall be valid and enforceable only to the extent of the negligence of Island, its subcontractors, employees, and agents. This indemnification obligation of Island 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 Island hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to Whatcom 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. Whatcom 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 Island's indemnity obligations under this Agreement.

In the event Island enters into subcontracts to the extent allowed under this Contract, Island's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County.

The parties hereto agree that the indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of Island are a material inducement to Whatcom to enter into this Agreement and are reflected in the rate set forth in Exhibit B.

By signing this Agreement Island acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless Whatcom from all claims and suits to the extent it is required to do so under Section 7 herein.

8. **TERMINATION:** Any party hereto may terminate this Agreement upon fifteen (15) days notice in writing either personally delivered or mailed to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
9. **CHANGES, MODIFICATIONS, AMENDMENTS, OR WAIVERS:** This Agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
10. **SEVERABILITY:** In the event of any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this

Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement on:

ISLAND COUNTY:

Jill Johnson, Board of County Commissioners, Island County      Date \_\_\_\_\_

**WHATCOM COUNTY:**  
**Recommended for Approval:**

Erika Lautenbach, Director	Date
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**Approved as to form:**

Royce Buckingham, Prosecuting Attorney	Date
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**Approved:**  
Accepted for Whatcom County:

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

**CONTRACTOR INFORMATION:**

**Island County COVID Response**  
PO Box 5000  
Coupeville, WA 98239

**EXHIBIT “A”**  
(BYRON FACILITY POLICY MANUAL)

**EXHIBIT "B"**  
(COMPENSATION)

Island County will reimburse Whatcom County at a rate of \$200/resident, per day for COVID-related isolation and quarantine at Whatcom County's COVID Temporary Isolation and Quarantine Facility.

Whatcom shall submit invoices on a monthly basis in a format approved by Island County. Monthly invoices must be submitted by the 15<sup>th</sup> day of the month, following the month of service. Invoices shall include the number of residents receiving isolation and quarantine. Invoices shall be submitted to:

[m.cohen@islandcountywa.gov](mailto:m.cohen@islandcountywa.gov)

or

Island County COVID Response  
PO Box 5000  
Coupeville WA 9839-5000

Payment by Island will be timely if it is made within 30 days of the receipt and acceptance of billing information from Island. Island may withhold payment of an invoice if Whatcom submits it more than 30 days after the expiration of this Agreement.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-595

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<b>File ID:</b>	AB2021-595	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/12/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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 Opportunity Council to administer the Housing and Essential Needs Program in the amount of \$503,370 for a total amended contract amount of \$2,540,694

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Staff Memo, Proposed Amendment

## MEMORANDUM

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Opportunity Council – Housing and Essential Needs Program Contract Amendment #10  
**DATE:** October 12, 2021

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

▪ **Background and Purpose**

Housing and Essential Needs (HEN) is a program of the Washington State Department of Commerce Consolidated Homeless Grant (CHG) and provides funding for rent and utility assistance, essential needs items, and case management for recipients whose eligibility is determined by the Department of Social and Health Services (DSHS). The purpose of this amendment is to increase funding by \$503,370 as a result of increased funding received through the new CHG which began on 07/01/2021.

This additional funding will support:

1. Personnel and operations costs, which:
  - a. Includes an additional Case Manager FTE;
  - b. Reflects increased support from all 9 Case Managers, which includes 2 Lead Case Managers and is necessary to extend existing clients with significant barriers to housing, in motels; and
  - c. Reflects support for an increase to the estimated number of households to be served (230 from 214)
2. Rent and related costs; and
3. Subsequently, increased indirect costs.

The number of eligible households receiving essential needs has decreased due to increased purchases of move-in kits, which cost more than filling monthly bags of essential needs. The number of eligible households receiving case management and rental assistance is only slightly higher as there are less households exiting the HEN program and motel stays are being extended due to COVID and the lack of affordable housing.

▪ **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$2,540,694 for the current contract period (07/01/2021 – 06/30/2022) and \$7,207,481.50 for the entire contract period (07/01/2018 – 06/30/2022), is provided by the Washington State Department of Commerce CHG. These funds are included in the 2021 budget. Council approval is required as funding provided through this amendment increases the approved budget by more than 10%.

Please contact Ann Beck, Human Services Supervisor at 360-778-6055 ([ABeck@co.whatcom.wa.us](mailto:ABeck@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)), if you have any questions or concerns regarding this request.

**WHATCOM COUNTY  
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:  
201805015 – 10

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Barbara Johnson-Vinna	
Contractor's / Agency Name:		Opportunity Council	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		201805015
Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:	
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		202107011
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	Contract Cost Center:		122600
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
\$ 6,704,111.50			
This Amendment Amount:			
\$ 503,370.			
Total Amended Amount:			
\$ 7,207,481.50			
Summary of Scope: This contract funds programmatic and administrative services associated with the operation of the Housing and Essential Needs (HEN) Program and the distribution of rental and utility assistance subsidies to eligible participants.			
Term of Contract:	1 Year	Expiration Date:	06/30/2022
Contract Routing:	1. Prepared by:	JT	Date: 07/20/2021
	2. Health Budget Approval	KR/JG	Date: 09/29/2021
	3. Attorney signoff:	RB	Date: 10/01/2021
	4. AS Finance reviewed:	M Caldwell	Date: 10/12/21
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Executive Contract Review:		Date:
	8. Council approved (if necessary):	AB2021-595	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

## WHATCOM COUNTY CONTRACT AMENDMENT

### PARTIES:

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

AND CONTRACTOR:  
Opportunity Council  
1111 Cornwall Avenue  
Bellingham, WA 98225

### CONTRACT PERIODS:

Original & Amendment #1:	07/01/2018 – 06/30/2019	Amendment #6 & #7:	07/01/2020 – 06/30/2021
Amendment #2:	10/01/2018 – 06/30/2019	Amendment #8:	05/01/2021 – 06/30/2021
Amendment #3:	01/01/2019 – 06/30/2019	Amendment #9 & #10:	07/01/2021 – 06/30/2022
Amendment #4:	03/15/2019 – 06/30/2019		
Amendment #5:	07/01/2019 – 06/30/2020		

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

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### DESCRIPTION OF AMENDMENT:

1. Amend Exhibit A – Scope of Work, to:
  - a. Lower the number of eligible households receiving essential needs as the Opportunity Council has increased their purchases of move-in kits rather than filling monthly bags of essential needs.
  - b. Increase the number of eligible households receiving case management and rental assistance. This number is only slightly higher as less households are exiting the HEN Program and motel stays are being extended due to COVID and the lack of affordable housing.
2. Amend Exhibit B – Compensation, to increase funding by \$503,370 to support additional personnel costs, operations, rent and related costs, and subsequently, increased indirect costs.
3. Funding for this contract period (07/01/2021 – 06/30/2022) is not to exceed \$2,540,694.
4. Funding for the total contract period (07/01/2018 – 06/30/2022) is not to exceed \$7,207,481.50.
5. All other terms and conditions remain unchanged.
6. The effective start date of the amendment is 07/01/2021.

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

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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:

Greg Winter, Executive Director		
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

Satpal Singh Sidhu, County Executive	Date
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**CONTRACTOR INFORMATION:**

Opportunity Council  
1111 Cornwall Avenue  
Bellingham, WA 98225  
[Greg.Winter@oppco.org](mailto:Greg.Winter@oppco.org)

**EXHIBIT "A" – Amendment #10**  
**(SCOPE OF WORK)**

**I. Background**

The Housing and Essential Needs (HEN) is one of three programs created by Engrossed Senate House Bill 2082 which terminated the Disability Lifeline (DL) Program. HEN funds are part of Washington State Department of Commerce (Commerce) Consolidated Homeless Grant (CHG) and are intended to provide rental assistance, case management, utility assistance and essential needs for Medical Care Services recipients whose eligibility is determined by the Department of Social and Health Services (DSHS). The Opportunity Council's Whatcom Homeless Service Center (WHSC) is a housing services program that serves as the coordinated entry for homelessness prevention and re-housing services for Whatcom County residents. The Community Services Division of the Opportunity Council oversees and administers housing case management and related programs. The WHSC administers HEN rental and utility assistance in coordination with Community Services. Community Services administers case management services for the HEN Program and the purchasing and distribution of Essential Needs products for HEN eligible clients. The WHSC manages the Homeless Management Information Services (HMIS) for the County and is responsible for the HMIS requirements of the HEN Program. People eligible to receive HEN rental and utility assistance, and Essential Needs items, will be served as long as funding is available and within the designated program requirements.

**II. Project Description and Design**

Housing and Essential Needs funds are limited to providing rental assistance, case management, utility assistance and essential needs for Washington Apple Health (Medicaid) recipients who are experiencing homelessness, or at substantial risk of becoming homeless and whose eligibility is determined by DSHS. The HEN Program is not intended to provide long term support for households, nor will it be able to address all the financial and supportive service needs of households that affect housing stability, nor will it be able to serve all those who are eligible. WHSC serves as the administrative entity for the rental and utility assistance, while the Community Services Division administers case management and the purchasing and distribution of essential needs products and transportation assistance, for eligible individuals. The WHSC and Community Services will staff the program with program operations and case management staff that are funded by the Contract and are responsible for program implementation.

Due to a change in state law in March of 2018, expansion of HEN eligibility now includes Aged, Blind, or Disabled (ABD) recipients, and those who DSHS has determined to be incapacitated due to substance use. HEN providers are expected to prioritize those who are HEN-eligible who have the greatest need, including prioritizing people experiencing homelessness. Guidance from Commerce on prioritization of HEN-eligible clients indicates the following factors must be used to determine greatest need to include, but not be limited to: unsheltered homelessness, chronic homelessness, and length of time homeless. Additional guidance on prioritization is available in the Washington State Coordinated Entry Guidelines, Section 4, and within the Consolidated Homeless Grant guidelines.

**III. Statement of Work**

**A. HEN Rental & Utility Assistance and Case Management Services**

The Contractor will be responsible for programmatic and administrative services associated with the operation of the HEN Program. Programmatic and administrative services include all activities necessary to operate the WHSC and Community Services in accordance with the requirements set forth in the Administrative Requirements and Guidelines for the CHG as more fully described in Section IV: Special Conditions, below.

The Contractor will:

1. Commit to efforts to reducing and ending homelessness in Whatcom County by:
  - a. Prioritizing unsheltered homeless households for services (as per CHG Guidelines).
  - b. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing (as per CHG Guidelines).
  - c. Employing a progressive engagement service model.
2. Provide direct services to individuals whose eligibility is noted in the DSHS Benefits Verification System (BVS).
3. Document client eligibility in client files.

4. Authorize and issue rental and utility assistance subsidies in a timely manner.
5. Track and report rental and utility assistance subsidies.
6. Support households in obtaining or maintaining permanent housing. This may include payment of eviction, attorney, or collections fees for previous rental damages, or move in kits. Funding for these expenses must be paid directly to a third party on behalf of the household and noted in a household's housing stability plan.
7. Coordinate with existing housing providers and landlords to identify and secure permanent housing placements for clients.
8. Cultivate and maintain relationships with local landlords who agree to participate in the program.
9. Make client referrals for Essential Needs Services, housing and other community resources.
10. Coordinate with the Community Service Office of DSHS regarding client service delivery.
11. Comply with HMIS requirements including data entry and reporting responsibilities.
12. Commit to reporting complete quality data that is timely, truthful and accurate (as per CHG/HEN Guidelines and HMIS User Agreement).
13. Ensure compliance with State confidentiality laws and regulations.
14. Complete all other activities identified by Whatcom County and Commerce as necessary to implement and manage the rental and utility assistance portion of the HEN Program.

#### **B. Essential Needs and Move-in Supplies Assistance**

The Contractor, specifically the Community Services Division of the Opportunity Council, will be responsible for administration and distribution of essential needs products, to include personal health and hygiene items, cleaning supplies, move-in supplies, or bus passes, and will accordingly:

1. Purchase and distribute essential needs products and move-in supplies to clients eligible for the Housing and Essential Needs (HEN) program.
2. Document client eligibility using DSHS Benefits Verification system.
3. Have written and available Applicant Denial and Grievance and Termination and Grievance policies and/or procedures.
4. Maintain an inventory tracking and tracking of client usage system.

#### **IV. Special Conditions**

The Contractor will comply with program requirements, policies and procedures contained in the "Department of Commerce Guidelines for Consolidated Homeless Grant" hereafter referred to as CHG Guidelines located at: <http://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>. Changes to the CHG Guidelines may be made without contract amendment. The CHG Guidelines will be updated periodically in compliance with changing State requirements. Whenever a revised edition of the CHG Guidelines is available, the County will provide an email notification.

Consequences of non-compliance with CHG Guidelines, as per the Department of Commerce for Grantees, are listed below and will be passed on to CHG Subgrantees:

1. If Commerce determines that a Grantee is failing to comply with the Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the noncompliance. The technical assistance and corrective action plan to address and remedy the noncompliance will be passed on to the Subgrantee by the County.
2. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%. The second corrective action plan will be passed on to the Subgrantee by the County.
3. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant, per the General Terms and Conditions TERMINATION FOR CAUSE.

## **V. Program Outcomes**

During this contract period, the Contractor is expected to meet the following outcomes:

- A. The Contractor will provide assistance to all HEN eligible households that seek assistance during the contract term providing that HEN rent and utility assistance funds are available. Based on the previous 12-month period, the program is expected to serve an estimated 230 households between 7/1/2021 – 6/30/2022.
- B. The Contractor will provide assistance to approximately 350 HEN-eligible households through the purchase and distribution of essential needs items and cleaning and move-in supplies as the budget for this purpose so allows.

## **VI. Reporting Requirements**

System-wide performance measures and benchmarks specific to intervention type (HMIS project type), are outlined in the table found at the link below. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted Prevention performance measures are exempted from the “Consequences of non-compliance” as per Commerce, listed in Section IV: Special Conditions above, wherein “Grantee” refers to the County being the CHG recipient.

Updates to the CHG System-Wide Mandatory Performance Measures table will be provided periodically by Commerce. Updates will be posted on the Whatcom County Health Department website which can be accessed at: <http://whatcomcounty.us/910/Housing-Program>. Additionally, the Opportunity Council will receive written notification from the County upon notification of updates from Commerce.

The Contractor will submit the following reports on a monthly basis to the County:

- A. Number of HEN eligible households assisted during the current month and how many have been assisted year to date.
- B. Average amount of subsidy per HEN household.
- C. Number of HEN eligible households declined.
- D. Projects falling under the following intervention types and funded by the Consolidated Homeless Grant (CHG), which includes HEN, will be expected to meet or demonstrate progress towards system-wide performance measures as set by the Washington State Department of Commerce.

Reporting for purchase and distribution of essential needs requires:

- A. The Contractor will submit an Essential Needs Report to the County, at which time it is due as required by Consolidated Homeless Grant guidelines, that identifies the number of people that received Essential Needs products and services each month. The report must answer this question: How many people did you serve with Essential Needs this month? Duplication of people is expected and will be acceptable.

**EXHIBIT "B" – Amendment #10**  
(COMPENSATION)

**I. Budget and Funding**

The source of funding for this contract, in an amount not to exceed \$2,540,694, is from the Washington State Department of Commerce, Consolidated Homeless Grant. Commerce and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of the contract. The budget for this contract is as follows:

<b>HEN PROGRAM BUDGET 07/01/2021 – 06/30/2022</b>		
<b>Cost Description*</b>	<b>Documents Required with Each Invoice</b>	<b>Budget</b>
Personnel (HMIS, Case Managers, Coordinated Entry, Support)	Expanded General Ledger (GL) report for the period billed	\$450,534
50% Fringe Benefit Rate	Expanded GL report based on federally approved fringe rate	\$225,267
Direct Program Supplies – Office Space, Telephone, Insurance	Expanded GL report for the period billed	\$25,000
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled. Mileage will be reimbursed at the GSA rate (per <a href="http://www.gsa.gov">www.gsa.gov</a> ).	\$7,688
Travel/Training	Include name of traveler, date, start & end point, and purpose. Receipts required for transportation costs, registration fees, etc. Lodging and meal costs follow federal guidelines ( <a href="http://www.gsa.gov">www.gsa.gov</a> ). Receipts for meals are not required.	\$7,119
	<b>SUBTOTAL</b>	<b>\$715,608</b>
Indirect Costs – 7% **		\$50,093
	<b>TOTAL</b>	<b>\$765,701</b>
<b>Rent Payments</b>		
Rent Payments – Includes: Monthly rent and any combination of first and last month's rent and security deposits; Utilities, Arrears and Late Fees; Pro-rated Rent; Hotel/Motel expenses; Lot Rent for RV's & Manufactured Homes for HEN enrolled; Rental Arrears; Late Fees Prior to HEN Enrollment; Permanent Housing Support Expenses (must be paid directly to a third party) for eviction costs/damages to previous units, all in accordance with CHG Guidelines Section 5.3.	Expanded GL with Client ID, payee, amount	\$1,449,972
Landlord Incentives (excludes volunteer incentives), Security Deposits and Landlord Admin. Required Fees	Expanded GL report for the period billed	\$60,000
<b>Other Housing Costs</b>		
Utility Payments, Arrears (not included with rent)	Expanded GL report for the period billed	\$50,000
Application Fees, Background/Credit Check Fees, utility deposits (excluding cable), and costs of urinalysis for drug testing of household members if necessary/required for rental housing in accordance with CHG Guidelines Section 5.3		\$3,500
	<b>SUBTOTAL</b>	<b>\$1,563,472</b>
Indirect Costs – 7% **		\$109,443
	<b>TOTAL</b>	<b>\$1,672,915</b>

ESSENTIAL NEEDS ASSISTANCE BUDGET 07/01/2021 – 06/30/2022		
Cost Description	Documents Required Each Invoice	Budget
Personnel	GL Detail	\$30,000
Hygiene Product, Cleaning and Move-in Supplies, and Transportation Assistance	GL Detail and Receipts	\$65,000
Insurance/Supplies/Mortgage/Rent		\$400
SUBTOTAL		\$95,400
Indirect Costs – 7% **		\$6,678
Essential Needs TOTAL		\$102,078
TOTAL CONTRACT AMOUNT		\$2,540,694

\*The Contractor may transfer funds among budget line items within each program budget only (HEN, Rent, or Essential Needs Assistance) in an amount up to 10% of the total program budget. Changes to a line item budget that exceed 10% must be approved in writing by the County.

\*\*In no instance shall the indirect cost exceed 7% or fringe benefit rate exceed the current federally approved rate. All allocated direct costs must be based on approved cost allocation plan.

## II. **Invoicing**

1. The Contractor shall submit itemized invoices up to two times per month in a format approved by the County. Invoices should be received no later than the 15<sup>th</sup> of each month for the previous month expenditures. Invoices submitted for payment must include the documentation specified in the tables above.
2. Invoices and all invoice-related communication should be sent to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
3. End of year rent and utility assistance payments will be invoiced and reimbursed based on the date of the rent or utility assistance check issuance.
4. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this Contract.
5. Invoices must include the following statement, with an authorized signature and date:  
**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**
6. Duplication of Billed Costs or Payments for Services: The Contractor shall not bill the Health Department for services performed or provided under this contract, and the Health Department 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: AB2021-600

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<b>File ID:</b>	AB2021-600	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/13/2021	<b>Entered by:</b>	AKell@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Contract (FCZDBS)		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

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

Request authorization for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and Geneva Consulting Services for the coordination of the Whatcom Lead Integrating Organization (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

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

The WRIA 1 Watershed Management Board acts as Local Integrating Organization (LIO) for water resources programs in the Whatcom County region. The WRIA 1 Management Team met on August 11, 2021 and approved the draft FFY 2022 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership. The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO

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### **HISTORY OF LEGISLATIVE FILE**

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

**WHATCOM COUNTY  
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](http://www.whatcomcounty.us)

**MEMORANDUM**

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

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

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

**RE:** Contract between Whatcom County Flood Control Zone District and Geneva Consulting Services for Coordination of the Whatcom County LIO

**DATE:** September 13, 2021

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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 \$86,872.00 with Geneva Consulting Services for coordination of the Whatcom Local Integrating Organization (LIO).

▪ **Background and Purpose**

The WRIA 1 Watershed Management Board acts as the Local Integrating Organization (LIO) for protection and recovery of the WRIA in coordination with the Puget Sound Partnership. The WRIA 1 Management Team met on August 11, 2021 and approved the draft FFY 2022 LIO Coordination Scope of Work for the Whatcom County Flood Control Zone District as fiscal agent, acting on behalf of the WRIA 1 Watershed Management Board, for negotiating a contract with the Puget Sound Partnership. The FCZD received a grant agreement from the Puget Sound Partnership (Agreement Number: 2022-21) to provide funding for LIO Coordination.

The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) advance implementation of the 2018-2022 action agenda and development of the 2022-2026 action agenda 3) performance management, 4) support adaptive management of LIO Ecosystem Recovery Plans, and 5) tailor LIO Coordination to support unique vision and goals of LIO. Geneva Consulting Services was chosen for this contract through a competitive selection process using the Whatcom County Request for Qualifications (RFQ 21-01).

▪ **Funding Amount and Source**

This contract, for the amount of \$86,872.00, is fully funded through a grant from the Puget Sound Partnership. The FCZD has adequate budget authority in the 2021 budget and in the proposed 2022 budget for this contract.

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

Enclosures

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.  
202110013

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Natural Resources/Whatcom LIO 907010
Contract or Grant Administrator:	Gary Stoyka/Austin Rose
Contractor's / Agency Name:	Geneva Consulting Services

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☐  
 Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes ☒ No ☐ 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 ☐ No ☒ If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded?  
 Yes ☒ No ☐ If yes, Whatcom County grant contract number(s): pending

Is this contract the result of a RFP or Bid process? Contract \_\_\_\_\_  
 Yes ☒ No ☐ If yes, RFP and Bid number(s): RFQ 21-01 Cost Center: 169121

Is this agreement excluded from E-Verify? No ☐ Yes ☒ 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 for Commercial off the shelf items (COTS).
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>86,872.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
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Summary of Scope: The purpose of this contract is to implement the scope of work in the LIO grant agreement to coordinate the Whatcom County LIO including the following tasks: 1) organize, support, administer, facilitate, and coordinate a Local Integrating Organization, 2) advance implementation of the 2018-2022 action agenda and development of the 2022-2026 action agenda 3) performance management, 4) support adaptive management of LIO Ecosystem Recovery Plans, and 5) tailor LIO Coordination to support unique vision and goals of LIO.

Term of Contract:	One year	Expiration Date:	September 30, 2022
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Contract Routing:

1. Prepared by:	<u>Austin Rose</u>	Date:	<u>09/13/2021</u>
2. Attorney signoff:	<u>Christopher Quinn</u>	Date:	<u>10/12/21</u>
3. AS Finance reviewed:	<u>M Caldwell</u>	Date:	<u>10/12/21</u>
4. IT reviewed (if IT related):	_____	Date:	_____
5. Contractor signed:	_____	Date:	_____
6. Submitted to Exec.:	_____	Date:	<u>10/13/21</u>
7. Council approved (if necessary):	_____	Date:	_____
8. Executive signed:	_____	Date:	_____
9. Original to Council:	_____	Date:	_____

**CONTRACT FOR SERVICES**  
**Between Whatcom County Flood Control Zone District and Geneva Consulting Services**

Geneva Consulting Services, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 11,  
 Exhibit A (Scope of Work), pp. 12 to 14,  
 Exhibit B (Compensation), pp. 15  
 Exhibit C (Certificate of Insurance), pp. 16

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 October, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2022.

The general purpose or objective of this Agreement is to: support coordination of the Whatcom Local Integrating Organization (LIO), as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 86,872.00. 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:**

GENEVA CONSULTING SERVICES

\_\_\_\_\_  
 Becky Peterson, Sole Proprietor

**CONTRACTOR INFORMATION:**

Geneva Consulting Services

Becky Peterson  
 Sole Proprietor

Address:  
1020 Austin St.  
Bellingham, WA 98229

Mailing Address:  
1020 Austin St.  
Bellingham, WA 98229

**WHATCOM COUNTY:**  
**Recommended for Approval:**

\_\_\_\_\_  
Department Director                      Date

**Approved as to form:**

\_\_\_\_\_  
Prosecuting Attorney                      Date

**Approved:**  
Accepted for Whatcom County:

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. 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.

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 the County's cost, which cost shall not be included in the maximum compensation amount described in Exhibit B.. 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. Professional Liability

Professional Liability - \$1,000,000 per occurrence

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date.

### Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County.
- c. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- e. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- f. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.

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, excluding sickness, disease or death and for any damage that is attributable to COVID-19, 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.

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.

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:

Austin Rose, Planner I, 322 N. Commercial St. Suite 110 Bellingham, WA 98225

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:

To: Contractor, Geneva Consulting Services

1020 Austin St.  
Bellingham, WA 98229

Attention: Becky Peterson

Telephone: (360) 392-1301

Email: [genevaconsulting@comcast.net](mailto:genevaconsulting@comcast.net)

To: Whatcom County Public Works

322 N. Commercial St. Suite 110  
Bellingham, WA 98225

Attention: Austin Rose

Telephone: (360) 778-6286

Email: [arose@co.whatcom.wa.us](mailto:arose@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 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](http://www.uscis.gov)

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

- 40.1 Modifications:  
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.
- 40.2 Contractor Commitments, Warranties and Representations:  
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
- 41.1 Severability:  
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
- 41.2 Waiver:  
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 42.1 Disputes:
- a. General:  
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
  - b. Notice of Potential Claims:  
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

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

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

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

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

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

43.1 **Venue and Choice of Law:**

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

44.1 **Survival:**

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

45.1 **Entire Agreement:**

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

**EXHIBIT "A"**  
(SCOPE OF WORK)

**Task 1: Organize, Support, Administer, Facilitate, and Coordinate a Local Integrating Organization**

Project Approach:

- Maintain a public e-mail list for notification of WRIA1 Management Team and WRIA 1 Watershed Management Board meetings and other activities or events the community may have an interest in. Direct general inquiries to appropriate entity or individual as needed.
- Coordinate meeting logistics and facilitation for up to 3 work group or LIO staff teams meetings, 4 Steering Committee, 8 WRIA1 Management Team, and 5 WRIA 1 Watershed Management Board meetings. This includes agenda preparation, meeting summaries, and preparation of other supporting materials.
- Maintain the Whatcom LIO webpage to provide information on process and status of LIO work. This will include meeting agenda, summaries, and progress on near-term actions.
- Ensure cross-posting and distribution of Whatcom LIO relevant information with the WRIA1 Watershed Project, WRIA1 Salmon Recovery Program, and as appropriate, WWIN/ Whatcom ECONet.
- Maintain communication links to Puget Sound Partnership including with the Ecosystem Recovery Coordinator assigned to Whatcom LIO and report and distribute regional information from the Puget Sound Partnership to the Whatcom LIO participants as applicable.
- Attend up to 12 monthly Partnership meetings for LIO Coordinators for Action Agenda updates, 4 regional LIO Coordinator meetings, and other coordination meetings, regional meetings, or conference calls required by PSP for purposes of information gathering and reporting back to the appropriate WRIA1 Team.
- Coordinate with salmon recovery Lead Entity (ies). As needed, adaptively manage LIO structure to better reflect integration.
- Provide support, as requested, to Whatcom LIO Ecosystem Coordination Board representative and alternate in the form of coordinating local positions and/or briefing papers with or for the WRIA 1 Watershed Management Board, Watershed Management Team, and/or other groups as directed.

Assumptions:

- Operational communication is considered correspondence and information that is received from PSP, other LIOs, and other entities, will be distributed to the appropriate LIO Team or the Policy Boards.
- The consultant works with the LIO Staff Team and fiscal agent staff- depending on the information received- to frame up topics for discussion by the Management Team and/or Policy Boards, as needed.
- External communication that is considered outside of typical process-coordination communication will be referred to the fiscal agent staff and/or Management Team as applicable.
- Participation in regional meetings will be prioritized given budget considerations.

Work Products:

- Progress reports describing general communication and distribution of LIO-related materials to WRIA 1 Boards, Management Team, Steering Committee, Watershed Work Group, LIO Staff Team, and interested community members. January 15, 2022; April 15, 2022; July 15, 2022; and September 30, 2022.
- Agendas, supporting materials, and meeting summaries for Whatcom County LIO Staff Team, Watershed Work Group, Steering Committee, WRIA 1 Management Team, and WRIA 1 Boards. January 15, 2022; April 15, 2022; July 15, 2022; and September 30, 2022.
- Agendas from regional meetings and trainings attended. January 15, 2022; April 15, 2022; July 15, 2022; and September 30, 2022.
- Briefing papers or other material prepared in support of Whatcom LIO Ecosystem Coordination Board representative and alternate. January 15, 2022; April 15, 2022; July 15, 2022; and September 30, 2022.

Budget Estimate: \$\$39,035

*Labor:* \$ 38,766

*Mileage:* \$269.00

## **Task 2: Advance Implementation of the 2018-2022 Action Agenda and Development of the 2022-2026 Action Agenda**

### Project Approach:

- Coordinate and facilitate implementation of near-term actions identified in the 2018-2022 Action Agenda. This will include:
  - Share progress on Near Term Actions (NTAs) relevant to the Whatcom LIO using Puget Sound Info and coordinate presentations/status updates from Near Term Action (NTA) owners to LIO
  - Assistance with identifying existing funding sources and leveraging existing partnerships that can contribute to NTA implementation
  - Provide assistance for identifying funding opportunities for NTAs. In addition to direct notification of funding opportunities to owners of near-term actions and ongoing programs, information will be provided to the Whatcom Watersheds Information Network (WWIN)/ Whatcom ECONet for broader public distribution.
  - Provide support to implementation of regional or local NTAs as requested in accordance in accordance with LIO grant requirements.
- Coordinate a local process to engage regional leads and Water Resource Inventory Areas (WRIA) 1 Management Team on a collaborative planning process.
- Coordinate local contributions and content for the 2022-2026 Action Agenda Coordination includes working with groups within the LIO to receive feedback at key points, and drafting or assisting in the drafting of local content when applicable. .
- Coordinate local input to the Strategic Initiative Leads and Implementation Strategy Work Group
- Engage with Whatcom ECB representative prior to ECB meetings as needed.

### Assumptions:

- The LIO Staff Team, Steering Committee, and Management Team have a critical role in the tasks and approaches listed for Task 2. Process for receiving input occurs within the framework established for WRIA 1 processes involving staff and Management Team.

### Work Products:

- Monthly progress reports using PSP template describing coordination of near-term action implementation and collaborative planning process.
- .
- Copy of comments on the 2022-2026 Action Agenda Comprehensive Plan update, if any, submitted to Puget Sound Partnership September 30, 2022
- Copy of comments submitted to Puget Sound Partnership, Strategic Initiative Leads, and/or Implementation Strategy Work Groups, if any. September 30, 2022

Budget Estimate: \$ \$26,075

Labor: \$25,896.00

Travel: \$179.00

## **Task 3: Performance Management**

### Project Approach:

- Support Whatcom County Public Works- Natural Resources staff with invoicing and reporting to Puget Sound Partnership. Provide support for other grant agreement tasks as needed.
- Coordinate twice yearly reporting on progress of near-term actions to WRIA 1 Management Team using Puget Sound Reporting format.

### Assumptions:

- The near-term action owners have a critical role in providing information twice yearly to the Management Team and Puget Sound Partnership.

### Work Products:

- Twice yearly reports on status of near-term actions to WRIA 1 Management Team. April 15 and September 30, 2022.

Budget Estimate: \$\$2,418.00

Labor: \$\$2,418.00

#### **Task 4: Support Adaptive Management of LIO Ecosystem Recovery Plans**

##### Project Approach:

- Coordinate adaptive management of the LIO plan and strategies and supporting advancement of priority tasks.
- Coordinate with LIO teams on strategies and actions from Task 2 coordination of input to the PSP on development of the 2022-2026 Action Agenda to identify changes, inclusions, and other updates to the Whatcom LIO plan, and coordinate the recommended changes through the Management Team process.
- Communicate and provide changes and updates to the Whatcom LIO plan to PSP and prepare or coordinate updates to the Miradi files to reflect adaptive management of the plan.
- Maintain and Update LIO Plan Miradi files with WRIA 1 Watershed Management Board strategies that are a subset of the LIO plan.
- Adaptively manage the WRIA 1 Watershed Management Board five year plan to reflect changes, if applicable, to the strategies and actions in the LIO plan.

##### Assumptions:

- The WRIA 1 Management Team and Steering Committee will have critical roles in providing information on Task 4 coordination.
- The WRIA 1 Management Team, Steering Committee, and LIO Staff Team have critical roles in adaptive management of the LIO plan.

##### Work Products:

- Presentations.
- Summary of Changes to the Ecosystem Recovery Plan via Adaptive Management.
- Updated Miradi files.

Budget Estimate: \$ \$12,636.00

Labor: \$12,636.00

#### **Task 5: Tailor LIO coordination to Support Unique Vision and Goals of LIO**

##### Project Approach:

- Provide capacity support to Whatcom Watershed Information Network for to coordinate and collaborate on outreach topics associated with the LIO Plan, WRIA 1 Watershed Management Board work plan and other WRIA 1 efforts through:
  - Regular updates to Management Team,
  - Input on WWIN annual work plan
  - Support updating and upgrading the WWIN website
  - Support and expand community participation in Whatcom Water Week
  - Other tasks as funding allows.

##### Assumptions:

- Outreach information related to the WRIA 1 programs will be vetted through the WRIA 1 process (e.g., Management Team, Staff Teams, Work Groups)

##### Work Products:

- Efforts on coordination support will be summarized in monthly progress reports.

Budget Estimate: \$6,708.00

Labor: \$ \$6,708.00

**EXHIBIT "B"**  
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, "Scope of Work", the County agrees to compensate the Contractor according to the hourly rates provided (below). Mileage incurred in the course of performing the duties herein shall be reimbursed at the current IRS rate.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for mileage reimbursement must be accompanied by mileage logs containing date of travel, start & end point and purpose. **Compensation shall not exceed \$86,872.00.** Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

**Budget Summary**

<b>Task</b>	<b>Hours</b>	<b>Labor (\$ 78/hr)</b>	<b>Expenses</b>	<b>Totals</b>
<b>Task 1.0</b>	497	\$38,766.00	*\$269.00	\$39,035.00
<b>Task 2.0</b>	332	\$25,896.00	*179.00	\$26,075.00
<b>Task 3.0</b>	31	\$2,418.00		\$2,418.00
<b>Task 4.0</b>	162	\$12,636.00		\$12,636.00
<b>Task 5.0</b>	86	\$6,708.00		\$6,708.00
<b>Totals</b>			<b>Not to Exceed</b>	<b>\$86,872.00</b>

\* Mileage

**EXHIBIT "C"**  
(CERTIFICATE OF INSURANCE)



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
07/29/2021

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

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

<b>PRODUCER</b> Rice Insurance LLC 1400 Broadway P.O. Box 639 Bellingham WA 98227		<b>CONTACT NAME:</b> Taylor VanBrocklin <b>PHONE (A/C, No, Ext):</b> (360) 734-1161 <b>FAX (A/C, No):</b> (360) 734-1173 <b>E-MAIL:</b> taylorv@riceinsurance.com <b>ADDRESS:</b>	
<b>INSURED</b> Rebecca Peterson 1020 Austin St Bellingham WA 98229		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Ohio Security Insurance Co.	<b>NAIC #</b> 24082
		<b>INSURER B:</b>	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CL216483680      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	BLS56214770	07/09/2021	07/09/2022	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 15,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Whatcom County is included as an additional insured for the above-noted insurance per form CG8810 0413. This Commercial General Liability insurance shall be considered as primary and non-contributory, and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

<b>CERTIFICATE HOLDER</b> Whatcom County Public Works 322 N. Commercial St Suite 210 Bellingham WA 98225	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-602

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<b>File ID:</b>	AB2021-602	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/13/2021	<b>Entered by:</b>	DEbergso@co.whatcom.wa.us		
<b>Department:</b>	Facilities Management Division	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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Primary Contact Email: [debergso@co.whatcom.wa.us](mailto:debergso@co.whatcom.wa.us) <<mailto:debergso@co.whatcom.wa.us>>

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

Request authorization for the County Executive to enter into an agreement between Whatcom County and Greg Dibble for the lease of 600 Dupont Street, Bellingham WA

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

Facilities Management is seeking approval of a commercial office lease for property located at 600 Dupont Street. This lease will accommodate the additional staff authorized by the Council for the Public Defender's Office. The office space will also serve as surge space for other department staff as needed. The lease term is three years, with the option of two three-year extensions.

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### **HISTORY OF LEGISLATIVE FILE**

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

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**Attachments:** Letter of Intent, 10.19.21 Lease\_Merged with Floor Plan



## **LETTER OF INTENT**

The following terms and conditions will serve as evidence of the Parties' Intent to Lease.

<b>LANDLORD:</b>	Greg Dibble
<b>TENANT:</b>	Whatcom County
<b>PREMISES:</b>	600 Dupont St - Entire Lower Level Bellingham, WA 98225
<b>SIZE:</b>	Approximately 4,820 SF
<b>PRIMARY USE:</b>	General Office Purposes
<b>INITIAL TERM:</b>	36 months, with annual 3% increases
<b>OPTIONS:</b>	Two, 3-year options with 3% annual increases
<b>TYPE OF LEASE:</b>	NNN type lease
<b>MONTHLY BASE RENT:</b>	Months 1-12 - \$6,346.33/month (\$15.80/SF Annual) Months 13-24 - \$6,536.72/month Months 25-36 - \$6,732.82/month
<b>ADDITIONAL MONTHLY RENT:</b>	NNN are estimated at \$1,735.20/month (\$4.32/SF annual)

114 W. Magnolia St., Suite 201 Bellingham, WA 98225  
[www.PacificContinentalRealty.com](http://www.PacificContinentalRealty.com) Commercial Management | Sales | Leasing

<b>ANNUAL RENT INCREASES:</b>	3%
<b>RENT DEPOSIT:</b>	Rent for Month 1 (\$6,346.33) and Month 36 (\$6,732.82) which shall be delivered to Tenant Broker at time of Tenant signing Lease, then delivered to Landlord upon Landlord's signing the Lease.
<b>SECURITY DEPOSIT:</b>	\$6500.00 delivered to Tenant Broker at time of Tenant signing the Lease, and then delivered to Landlord upon Landlord's signing the Lease.
<b>LEASE COMMENCEMENT:</b>	November 1, 2021
<b>RENT COMMENCEMENT:</b>	November 1, 2021
<b>LANDLORD WORK:</b>	NONE – Building Received "as-is"
<b>TENANT IMPROVEMENTS:</b>	None
<b>UTILITIES:</b>	Responsibility of Tenant
<b>SIGNAGE:</b>	Tenant shall have the right to place signage at the Premises as approved by landlord, which shall not be unreasonably withheld or delayed. Signage shall be paid for by tenant.
<b>LOI PERIOD:</b>	Both parties agree to negotiate in good faith on this Letter of Intent (LOI) to reach terms for a lease agreement within ___14___ days from the date of this letter.

**AGENCY DISCLOSURE:**

Ben Black of Pacific Continental Realty, LLC is the Broker of record for the Tenant; KC Coonc is the Broker of record for the Landlord. By execution below, both parties hereby represent that they have been given a copy of the pamphlet. "The Law of Real Estate Agency".

This proposal does not represent any contractual obligation or infer that any other rights exist between Landlord and Tenant, until such legally binding lease is executed by both parties. If these terms and conditions are acceptable, please signify your approval by signing below and returning this original copy.

Acknowledged by:  \_\_\_\_\_, for the Tenant.

**TIER SCHROEDER**  
**WC DEPUTY EXECUTIVE**

Acknowledged by: \_\_\_\_\_, for the Landlord.



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Rev. 9/2020  
Page 1 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

THIS LEASE AGREEMENT (the "Lease") is entered into and effective as of this 12th day of October, 20 21 between Greg Dibble, a(n) \_\_\_\_\_ ("Landlord"), and Whatcom County, a(n) \_\_\_\_\_ ("Tenant"). Landlord and Tenant agree as follows:

**1. LEASE SUMMARY.**

- a. **Leased Premises.** The leased commercial real estate (the "Premises") i) consists of an agreed area of approximately 4,820 rentable square feet and is outlined on the floor plan attached as Exhibit A; ii) is located on the land legally described on attached Exhibit B; and iii) is commonly known as 600 Dupont St, Bellingham, WA 98225 (suite number and address). The Premises do not include, and Landlord reserves, the exterior walls and roof of the building in which the Premises are located (the "Building"), the land beneath the Building, the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling; and the structural elements of the Building. The Building, the land upon which it is situated, all other improvements located on such land, and all Common Areas appurtenant to the Building are referred to as the "Property." The Building and all other buildings on the Property as of the date of this Lease contain an agreed total area of 7000 rentable square feet.
- b. **Lease Commencement Date.** The term of this Lease shall commence upon (check one):  
☐ Substantial completion of (choose one) ☐ Landlord's Work, or ☐ Tenant's Work as further described in the attached Exhibit C ("Work Letter"), but in no event later than \_\_\_\_\_, 20 \_\_\_\_  
☒ November 1, 20 21  
(the "Commencement Date").
- c. **Lease Termination Date.** The term of this Lease shall terminate at midnight on the last day of the October 31, 2024 full month following the Commencement Date or such earlier or later date as otherwise provided in this Lease (the "Termination Date"). Tenant shall have no right or option to extend this Lease, unless otherwise set forth in a rider attached to this Lease (e.g., Option to Extend Rider, CBA Form OR).
- d. **Base Rent.** The monthly base rent shall be (check one): ☐ \$ \_\_\_\_\_, or ☒ according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable by wire transfer or at Landlord's address shown in Section 1(h) below, or such other place designated in writing by Landlord.
- e. **Prepaid Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ 6346.33 as prepaid Rent, to be applied to Base Rent ~~due for months~~ and \$1,735.20 TO BE APPLIED TO NNN EXPENSES DUE FOR MONTH 1 through \_\_\_\_\_ of the Lease. SEE ADDENDUM FOR PREPAID RENT SCHEDULE FOR MONTH 36 OF INITIAL TERM.
- f. **Security Deposit.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ 6,500.00 to be held as a security deposit pursuant to Section 5 below. The security deposit shall be in the form of (check one): ☒ cash, check or wire transfer, or ☐ letter of credit according to the Letter of Credit Rider (CBA Form LCR) attached hereto.
- g. **Permitted Use.** The Premises shall be used only for General Office Purposes, subject to applicable zoning and other laws, and for no other purpose without the prior written consent of Landlord (the "Permitted Use").
- h. **Notice and Payment Addresses:**

Landlord: Greg Dibble  
1191 Old Marine Dr Bellingham 98225



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114 West Magnolia St. Ste. 201  
Bellingham, WA 98225  
Phone: 360-671-4200

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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 2 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

Email: greg.dibble@gmail.com

Tenant: Whatcom County

Email: \_\_\_\_\_

- i. **Tenant's Pro Rata Share.** Landlord and Tenant agree that Tenant's "Pro Rata Share" is 71 %, based on the ratio of the rentable area of the Premises stated in Section 1.a to the rentable area of all buildings on the Property stated in Section 1.a. Tenant's Base Rent and Pro Rata Share shall be proportionally adjusted in the event of any adjustment to the Premises', Building's or Property's rentable floor area either by remeasurement, which measurement standard shall be selected by Landlord in its reasonable discretion, or by physical change thereto.

**2. PREMISES.**

- a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, the Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Except for any tenant improvements to be completed by Landlord as described in the Work Letter attached as Exhibit C ("Landlord's Work"), Tenant shall accept the Premises and its improvements in their respective AS-IS, WHERE-IS condition, and shall further be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises (other than Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.
- c. **Tenant Improvements.** The Work Letter attached as Exhibit C sets forth all Landlord's Work, if any, and all tenant improvements to be completed by Tenant ("Tenant's Work"), if any, that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth in the Work Letter.

**3. TERM.** The term of this Lease shall commence on the Commencement Date, and shall end on the Termination Date, subject to any option to extend the term of this Lease set forth in a rider attached hereto (the "Term").

- a. **Early Possession.** Tenant shall have reasonable access to the Premises during the \_\_\_\_\_ days ((0) days if not filled in) preceding the Commencement Date for the sole purpose of installing Tenant's furniture, telecommunications, fixtures, telephone systems and computer cabling and the performance of Tenant's Work, if any. Such access shall be fully coordinated with Landlord in advance and Tenant shall not interfere with Landlord's Work. All of the terms and conditions of this Lease, including Tenant's insurance and indemnification obligations, shall apply during such time, except for payment of Base Rent. If Landlord permits Tenant to possess or occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1.
- b. **Delayed Possession.** Landlord shall act diligently to make the Premises available to Tenant; provided, however, neither Landlord nor any agent or employee of Landlord shall be liable for any damage or loss due to Landlord's inability or failure to deliver possession of the Premises to Tenant as provided in this Lease. If possession is delayed, the Commencement Date set forth in Section 1 shall also be delayed. If



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Rev. 9/2020  
Page 3 of 27

## **LEASE AGREEMENT**

(Multi-Tenant - Triple Net (NNN) Lease)

Landlord does not deliver possession of the Premises to Tenant within \_\_\_\_\_ days ((60) days if not filled in) after the Commencement Date specified in Section 1 (check one): ☐ Tenant may elect to cancel this Lease by giving written notice to Landlord no later than \_\_\_\_\_ days ((10) days if not filled in) after such time period ends, or ☒ then all Base Rent and Additional Rent shall be abated for each one (1) day after the Commencement Date during which possession of the Premises has not been delivered to Tenant. If Tenant gives such notice of cancellation, as Tenant's sole and exclusive remedy, the Lease shall be cancelled, all prepaid Rent and security deposits shall be refunded to Tenant, and neither Landlord nor Tenant shall have any further obligations to the other.

Notwithstanding anything in this Section 3(b) to the contrary, to the extent that any portions of the Landlord's Work or Tenant's Work have not been sufficiently completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease ("Tenant Delays"), the Term and Tenant's obligation to pay Base Rent and Additional Rent shall nevertheless commence on the Commencement Date set forth in Section 1, or upon the date that the Commencement Date would have occurred but for the Tenant Delays. The first "Lease Year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive Lease Year during the Term shall be twelve (12) months, commencing on the first day following the end of the preceding Lease Year.

### **4. RENT.**

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Term beginning on (check one): ☒ the Commencement Date, or ☐ \_\_\_\_\_ (if no date specified, then on the Commencement Date), and shall also pay any other additional payments, including Operating Costs, due to Landlord ("Additional Rent" and together with Base Rent, "Rent") when required under this Lease. Payments for any partial month during the Term shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Rent, and upon Tenant's failure to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Rent.
- b. **Triple Net Lease.** This Lease is what is commonly called a "Net, Net, Net" or "triple-net" Lease, which means that Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Operating Costs described in Section 8, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.
- c. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or 5% of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of 15% per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
- d. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or



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Rev. 9/2020  
Page 4 of 27

## **LEASE AGREEMENT**

(Multi-Tenant - Triple Net (NNN) Lease)

compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section 4.

5. **SECURITY DEPOSIT.** Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant defaults in the performance of any covenant or condition of this Lease, Landlord shall have the right, but not the obligation, to use or retain all or any portion of the security deposit for the payment of: (i) Base Rent, Additional Rent, or any other sum as to which Tenant is in default; or (ii) the amount Landlord spends or may become obligated to spend, or to compensate Landlord for any losses incurred by reason of Tenant's default. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security deposit shall not be construed as a payment of liquidated damages for Tenant's default. If at any time during the Term of the Lease the security deposit delivered by Tenant becomes insufficient to cover the amounts required under this Section 5, whether or not due to Landlord's application of all or a portion of the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefor by Landlord, deposit with Landlord an amount sufficient to replenish the security deposit to the amount required in Section 1 above. If Tenant is not in default of any covenant or condition of this Lease at the end of the Term, Landlord shall return any unused portion of the security deposit without interest within 30 days after the surrender of the Premises by Tenant in the condition required by Section 13 of this Lease.
6. **USES.** The Premises shall be used only for the Permitted Use, and for no other business or purpose without the prior written consent of Landlord. Tenant shall not do or permit any act to be done on or around the Premises that violates any law, ordinance, governmental regulation or order or that will increase the existing rate of insurance on the Premises, the Building, or the Property, or cause the cancellation of any insurance on the Premises, the Building, or the Property. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises, the Building, or the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees or to injure or annoy such persons.
7. **COMPLIANCE WITH LAWS.** Landlord represents to Tenant that, as of the Commencement Date, to Landlord's actual knowledge, but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, and orders, including without limitation, the Americans With Disabilities Act, and Landlord shall be responsible to promptly cure at its sole cost any noncompliance which existed on the Commencement Date. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for the Permitted Use at its sole cost and expense. Otherwise, if changes or alterations are required by law, rule, regulation, or order unrelated to the Permitted Use, Landlord shall make such changes and alterations at its expense.
8. **OPERATING COSTS.**
  - a. **Definition.** As used herein, "Operating Costs" shall mean all costs of operating, maintaining and repairing the Premises, the Building, and the Property, determined in accordance with generally accepted accounting principles, and including without limitation the following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary;



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Form: MT\_NNN  
Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 5 of 27

## **LEASE AGREEMENT**

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elevator service and repair and replacement of elevators when necessary; pest control; lighting systems; fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing Operating Costs (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Landlord and Tenant agree that if the Building is not 90% occupied during any calendar year (including the Base Year, if applicable), on a monthly average, then those portions of the Operating Costs that are driven by occupancy rates, as reasonably determined by Landlord, shall be increased to reflect the Operating Costs of the Building as though it were 90% occupied and Tenant's Pro Rata Share of Operating Costs shall be based upon Operating Costs as so adjusted. Operating Costs shall not include: Landlord's income tax or general corporate overhead; depreciation or amortization on the Building or equipment therein; loan or ground lease payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except to the extent expressly permitted above; any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building or otherwise reimbursed to Landlord, or other cost for which another party is required to pay Landlord (except as part of operating cost recoveries under other tenant leases) so that Landlord shall not recover any item of cost more than once. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Operating Costs" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Operating Costs which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services.

- b. **Type of Payment.** As Additional Rent, Tenant shall pay to Landlord on the first day of each month with payment of Base Rent one-twelfth of Tenant's Pro Rata Share of Operating Costs, which amount is determined in the manner set forth in Section 8(c) below.
- c. **Method of Payment.** Tenant shall pay to Landlord Operating Costs pursuant to the following procedure:
  - i. Landlord shall provide to Tenant, on or before the Commencement Date, a good faith estimate of annual Operating Costs for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Operating Costs for the then-current year.
  - ii. Each estimate of Tenant's annual Pro Rata Share of Operating Costs determined by Landlord, as described above, shall be divided into 12 equal monthly installments. Tenant shall pay to Landlord such monthly installment of Operating Costs with each monthly payment of Base Rent. In the event the estimated amount of Tenant's Pro Rata Share of Operating Costs has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.
  - iii. As soon as reasonably possible following the end of each calendar year during the Term, Landlord shall provide to Tenant a statement (the "Operating Costs Statement") setting forth the amount of Operating Costs actually incurred and the amount of Tenant's Pro Rata Share of Operating Costs actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's



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 Rev. 9/2020  
 Page 6 of 27

## **LEASE AGREEMENT** (Multi-Tenant - Triple Net (NNN) Lease)

Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following receipt of the Operating Costs Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the Term has expired, the excess shall be refunded to Tenant within 30 days after delivery of such Operating Costs Statement.

- iv. Should Tenant dispute any amount shown on the Operating Costs Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Operating Costs Statement upon written notice to Landlord given within 90 days after Tenant's receipt of such Operating Costs Statement. If Tenant fails to provide notice of dispute within such 90-day period, the Operating Costs Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within 60 days after Tenant's request therefor. If Landlord concurs with the audit results, and (x) if the audit reveals that Tenant's Pro Rata Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following completion of the audit; or (y) if the audit reveals that the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Operating Costs payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within 30 days after completion of the audit. If Landlord does not concur with the results of Tenant's audit, the parties shall within twenty (20) days thereafter agree on a neutral auditor who shall complete an audit within thirty (30) days after selection, and the decision of the neutral auditor shall be binding on the parties. The parties shall share evenly in the costs of any such neutral auditor. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this Section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

9. **UTILITIES AND SERVICES.** Landlord shall provide the following services for the Premises (7) days per week, (24) hours per day, the cost of which shall be included in the Operating Costs to the extent not separately metered to and exclusively serving the Premises (with the costs of such separately metered services to be directly billed to and paid by Tenant): (check all that apply) ☒ water; ☒ electricity (UPSTAIRS SPACE HAS SUB-METER AND MUST BE SUBTRACTED FROM PRIMARY METER); ☒ sewer; ☒ GAS (SEPARATELY METERED) ☐ trash and/or recycling removal; and ☒ HVAC from 24/7 a.m. to p.m. Monday through Friday; a.m. to p.m. on Saturday; and a.m. to p.m. on Sunday; ☐ janitorial service in the Premises and Building nights ((5) nights if not filled in) each week, exclusive of holidays. HVAC services will also be provided by Landlord to the Premises during additional hours on reasonable notice to Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, as and when billed, as Additional Rent. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage.

Tenant shall furnish all other utilities (including, but not limited to, telephone, internet, and cable service if available) and other services which Tenant requires with respect to the Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises, and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Operating Expenses as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

10. **TAXES AND ASSESSMENTS.** Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such ~~188~~ related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 7 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, all of which shall be included in Operating Costs and subject to partial reimbursement by Tenant as set forth in Section 8.

**11. COMMON AREAS.**

- a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants of the Property and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common HVAC systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with, and shall use commercially reasonable efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees to comply with, reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time, and shall not interfere with the use of Common Areas by others. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof of the Building and other improvements at the Property, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.
- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants of the Property to whom Landlord has granted or may grant such rights, to use the Common Areas.
- c. **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be includable in Operating Costs pursuant to Section 8. In performing such maintenance, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

12. **ALTERATIONS.** Tenant may make alterations, additions or improvements to the Premises (the "Alterations"), only with the prior written consent of Landlord, which consent, with respect to Alterations not affecting the structural components of the Premises or utility systems therein or for which the aggregate cost and expense does not exceed \$10,000, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have 30 days following Tenant's request for Landlord's consent to any Alterations to respond to such request, provided that Tenant's request includes the names of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include: (i) any of Tenant's Work approved by Landlord pursuant to Exhibit C, (ii) Tenant's Signage (as further provided in Section 15), or (iii) the installation of shelves, movable partitions, Tenant's equipment and trade fixtures that may be installed and removed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay when due, or furnish a bond for payment of (as set forth in Section 20), all claims for labor or materials furnished to or for Tenant at, or for use in, the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein. Except as otherwise provided in the Work Letter attached as Exhibit C with respect to Tenant's Work, any improvements installed as part of Tenant Work's or Alterations performed or caused to be performed by Tenant (check one): ☐ shall become the property of Landlord, or ☒ shall be removed by Tenant at its sole cost and expense upon the expiration or earlier termination of the Lease Term (unless Landlord conditioned



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 8 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

its consent in writing upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration, and it shall become Landlord's property). Tenant shall immediately repair any damage to the Premises caused by removal of improvements performed as part of Tenant's Work and/or Alterations.

13. **REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole cost and expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems to the extent serving more than just the Premises, and the Common Areas, the costs of which shall be included as Operating Costs unless otherwise expressly excluded pursuant to Section 8(a). Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after 10 days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof, together with interest thereon at the Default Rate set forth in Section 4, shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration or earlier termination of the Term, Tenant shall promptly and peacefully surrender the Premises to Landlord, together with all keys, in materially as good condition as when received by Tenant from Landlord or as thereafter improved (but subject to any obligations to remove any Tenant's Work and Alterations and/or restore the same as further provided in this Lease), reasonable wear and tear and insured casualty excepted.
14. **ACCESS AND RIGHT OF ENTRY.** After 24 hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Term; and (b) posting "for lease" signs within 180 days prior to the expiration or sooner termination of the Term.
15. **SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install and maintain any approved signage ("Signage") at Tenant's sole expense and in compliance with all applicable laws. Unless as otherwise provided in Exhibit C with respect to any of Tenant's Work, any Signage installed by Tenant shall be removed from the Premises, Building and Property at Tenant's expense upon the expiration or earlier termination of the Term. Tenant shall not damage or deface the Premises in installing or removing Signage and shall repair any injury or damage to the Premises caused by such installation or removal.
16. **DESTRUCTION OR CONDEMNATION.**
- a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged by fire or other insured casualty but not rendered untenable, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this Lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving 20 days' written notice of termination.



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Rev. 9/2020  
Page 9 of 27

**LEASE AGREEMENT**  
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The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within 60 days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon 20 days' notice to Landlord unless Landlord, within such 20 day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and Base Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Base Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any Alterations or improvements paid for by Tenant; any of Tenant's Work identified in Exhibit C (regardless of who may have completed them); Signage; Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the rentable area of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises or the Building or the Property and Tenant shall make no claim for the value of its leasehold. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses, provided that in no event shall Tenant's claim reduce Landlord's award.



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Rev. 9/2020  
Page 10 of 27

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**17. INSURANCE.**

- a. **Tenant's Liability Insurance.** During the Term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall (i) contain an endorsement identifying Landlord, its property manager (if any), and other parties designated by Landlord, as additional insureds using an endorsement form acceptable to Landlord, (ii) insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000 per occurrence, and a deductible of not more than \$10,000, and (iii) contain a provision requiring the insurer to deliver or mail written notice of cancellation to the named insureds at least (45) days before the effective date of the cancellation. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain at Tenant's sole cost business income coverage for at least six (6) months, business auto liability coverage, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage.
- b. **Tenant's Property Insurance.** During the Term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment, Tenant's Work, and Alterations, in the amount of their full replacement value, with a deductible of not more than \$10,000.
- c. **Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State of Washington. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after 30 days prior written notice to Landlord. Tenant shall deliver to Landlord, prior to Tenant's first taking possession of or occupying the Premises, and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section, and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.
- d. **Landlord's Insurance.** Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in Operating Costs, and if such insurance is provided by a "blanket policy" insuring other parties or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in Operating Costs.
- e. **Waiver of Subrogation.** Notwithstanding any other provision of this Lease to the contrary, Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such policies or to the extent of liabilities exceeding the limits of



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Rev. 9/2020  
Page 11 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

such policies.

**F. SEE ADDENDUM**

**18. INDEMNIFICATION.**

- a. **Indemnification by Tenant.** Tenant shall defend, indemnify, and hold Landlord and its property manager (if any) harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Tenant. ~~Tenant shall use legal counsel reasonably acceptable to Landlord in defense of any action within Tenant's defense obligation.~~
- b. **Indemnification by Landlord.** Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Landlord. Landlord shall use legal counsel reasonably acceptable to Tenant in defense of any action within Landlord's defense obligation.
- c. **Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- d. **Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or any other person in or about the Premises or the Property.
- e. **Survival.** The provisions of this Section 18 shall survive expiration or termination of this Lease.

19. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing the same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

Any transfer of this Lease by merger, consolidation, redemption or liquidation of Tenant, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor for the payment of Rent and performance of all obligations of Tenant under this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and related documents.



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Rev. 9/2020  
Page 12 of 27

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20. **LIENS.** Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Property and Premises free from any liens created by or through Tenant. Tenant shall indemnify, defend, and hold Landlord and the Property and Premises harmless from liability for any such liens including, without limitation, liens arising from any of Tenant's Work or Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall have the right to contest the correctness or validity of the lien, provided, however, within 10 days after Landlord's demand, at Tenant's expense, Tenant shall either remove the lien, or shall procure and record a lien release bond issued by a surety satisfactory to Landlord in form and amount sufficient to satisfy statutory requirements for satisfaction and release of the subject lien(s) from the Premises and Property. Tenant shall indemnify Landlord, the Premises, and the Property from and against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.
21. **DEFAULT.** Each of the following events shall be an "Event of Default" by Tenant under this Lease:
- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.
  - b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least 15 consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
  - c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within 60 days after its institution or commencement.
  - d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within 15 days after being levied.
  - e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of 30 days after notice by Landlord to Tenant of the breach, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, no Event of Default shall occur so long as Tenant commences such cure within 30 days of notice by Landlord and diligently pursues such cure to completion, but in no event longer than 60 days from the date of Landlord's notice.
  - f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date following five (5) days' notice from Landlord of Tenant's failure to take possession.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within 30 days after notice by Tenant to Landlord, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, Landlord shall not be in default if Landlord commences such cure within 30 days of notice by Tenant and diligently pursues such cure to completion. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.



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Rev. 9/2020  
Page 13 of 27

**LEASE AGREEMENT**  
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22. **REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative and not exclusive.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below.
- b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect, and without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to Landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord Rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.
- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Term, or any extension thereof.
- d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 14 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent, if any.

23. **MORTGAGE SUBORDINATION AND ATTORNMEN**. This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions ("Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than 15 days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.
24. **NON-WAIVER.** Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.
25. **HOLDOVER.** If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy at sufferance, which may be terminated according to Washington law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect other than any options to extend the Term. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.
26. **NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, or (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.
27. **COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal, or in any bankruptcy proceeding.
28. **ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total rentable square footage of the Premises; (ii) the date the Term commenced and the date it expires; (iii) the amount of minimum



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Rev. 9/2020  
Page 15 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Term of the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within 10 days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.

29. **TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.
30. **LANDLORD'S LIABILITY.** Notwithstanding anything in this Lease to the contrary, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its partners, shareholders, or members, as the case may be, ever be personally liable hereunder.
31. **RIGHT TO PERFORM.** If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any such other act on Tenant's behalf. Tenant shall, within 10 days of demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.
32. **HAZARDOUS MATERIAL.** As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's actual knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date in excess of reportable quantities except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released in excess of reportable quantities through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent (except in de minimis quantities typical of the Permitted Use, such as in office supplies and household



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 16 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

cleansers) and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes, ordinances, and product labels. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises or the Property; damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Property, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises or the Property; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Term. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Material on the Premises or the Property or any adjacent property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or the Property or such adjacent property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or earlier termination of this Lease.

33. **QUIET ENJOYMENT.** Provided Tenant pays Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.
34. **MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
35. **GENERAL.**
- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
  - b. **Brokers' Fees.** Tenant represents and warrants to Landlord that except for Tenant's Broker, if any, described or disclosed in Section 37 of this Lease, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that except for Landlord's Broker, if any, described or disclosed in Section 37 of this Lease, it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.
  - c. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 17 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

- d. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
- e. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife; provided in no event shall any of the foregoing events operate to extend the Term of this Lease.
- f. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington.
- g. **Memorandum of Lease.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior consent.
- h. **Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully executed by both parties.
- i. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- j. **Authority of Parties.** Each party to this Lease represents and warrants to the other that the person executing this Lease on behalf of such party has the authority to enter into this Lease on behalf of such party, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against such party.
- k. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.
36. **EXHIBITS AND RIDERS.** The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

Exhibit A: Floor Plan Outline of the Premises  
Exhibit B: Legal Description of the Property  
Exhibit C: Work Letter

CHECK THE BOX FOR ANY OF THE FOLLOWING THAT WILL APPLY. CAPITALIZED TERMS USED IN THE RIDERS SHALL HAVE THE MEANING GIVEN TO THEM IN THE LEASE.

- ☒ Rent Rider
- ☐ Arbitration Rider
- ☐ Letter of Credit Rider
- ☐ Guaranty of Tenant's Lease Obligations Rider
- ☐ Parking Rider
- ☒ Option to Extend Rider
- ☐ Rules and Regulations
- ☒ LEASE ADDENDUM

37. **AGENCY DISCLOSURE.** At the signing of this Lease, Landlord is represented by KC Coonc of Pacific



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 Multi-Tenant NNN Lease  
 Rev. 9/2020  
 Page 18 of 27

## LEASE AGREEMENT (Multi-Tenant - Triple Net (NNN) Lease)

Continental Realty, LLC (insert both the name of the Broker and the Firm as licensed) (the "Landlord's Broker"), and Tenant is represented by Ben Black of Pacific Continental Realty, LLC (insert both the name of the Broker and the Firm as licensed) (the "Tenant's Broker").

This Agency Disclosure creates an agency relationship between Landlord, Landlord's Broker (if any such person is disclosed), and any managing brokers who supervise Landlord's Broker's performance (collectively the "Supervising Brokers"). In addition, this Agency Disclosure creates an agency relationship between Tenant, Tenant's Broker (if any such person is disclosed), and any managing brokers who supervise Tenant's Broker's performance (also collectively the "Supervising Brokers"). If Tenant's Broker and Landlord's Broker are different real estate licensees affiliated with the same Firm, then both Tenant and Landlord confirm their consent to that Firm and both Tenant's and Landlord's Supervising Brokers acting as dual agents. If Tenant's Broker and Landlord's Broker are the same real estate licensee who represents both parties, then both Landlord and Tenant acknowledge that the Broker, his or her Supervising Brokers, and his or her Firm are acting as dual agents and hereby consent to such dual agency. If Tenant's Broker, Landlord's Broker, their Supervising Brokers, or their Firm are dual agents, Landlord and Tenant consent to Tenant's Broker, Landlord's Broker and their Firm being compensated based on a percentage of the rent or as otherwise disclosed on the attached addendum. Neither Tenant's Broker, Landlord's Broker nor either of their Firms are receiving compensation from more than one party to this transaction unless otherwise disclosed on an attached addendum, in which case Landlord and Tenant consent to such compensation. Landlord and Tenant confirm receipt of the pamphlet entitled "The Law of Real Estate Agency."

38. **COMMISSION AGREEMENT.** If Landlord has not entered into a listing agreement (or other compensation agreement with Landlord's Broker), Landlord agrees to pay a commission to Landlord's Broker (as identified in the Agency Disclosure paragraph above) as follows:

- ☐ \$ \_\_\_\_\_  
☐ \_\_\_\_\_ % of the gross rent payable pursuant to the Lease  
☐ \$ \_\_\_\_\_ per square foot of the Premises  
☒ Other Listing Agreement

Landlord's Broker ☐ shall ☐ shall not (shall not if not filled in) be entitled to a commission upon the extension by Tenant of the Term pursuant to any right reserved to Tenant under the Lease calculated ☐ as provided above or ☐ as follows \_\_\_\_\_ (if no box is checked, as provided above). Landlord's Broker ☐ shall ☐ shall not (shall not if not filled in) be entitled to a commission upon any expansion of Premises pursuant to any right reserved to Tenant under the Lease, calculated ☐ as provided above or ☐ as follows \_\_\_\_\_ (if no box is checked, as provided above).

With respect to any commission earned upon execution of this Lease or pursuant to any expansion of the Premises, Landlord shall pay one-half upon execution of the Lease or any amendment/addenda thereto expanding the Premises, and one-half upon occupancy of the Premises by Tenant. With respect to any commission earned upon extension of the Term of this Lease, Landlord shall pay one-half upon execution of any amendment/addenda to the Lease extending the Term and one-half upon the commencement date of such extended term. Landlord's Broker shall pay to Tenant's Broker (as identified in the Agency Disclosure paragraph above) the amount stated in a separate agreement between them or, if there is no agreement, \$ \_\_\_\_\_ or \_\_\_\_\_ % (complete only one) of any commission paid to Landlord's Broker, within 5 days after receipt by Landlord's Broker.

If any other lease or sale is entered into between Landlord and Tenant pursuant to a right reserved to Tenant under the Lease, Landlord ☐ shall ☐ shall not (shall not if not filled in) pay an additional commission according to any commission agreement or, in the absence of one, according to the commission schedule of Landlord's Broker in effect as of the execution of this Lease. Landlord's successor shall be obligated to pay any unpaid commissions upon any transfer of this Lease and any such transfer shall not release the transferor from liability to pay such commissions.



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 19 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

**39. BROKER PROVISIONS.**

LANDLORD'S BROKER, TENANT'S BROKER AND THEIR FIRMS HAVE MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PREMISES; THE MEANING OF THE TERMS AND CONDITIONS OF THIS LEASE; LANDLORD'S OR TENANT'S FINANCIAL STANDING; ZONING; COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; SERVICE OR CAPACITY OF UTILITIES; OPERATING COSTS; OR HAZARDOUS MATERIALS. LANDLORD AND TENANT ARE EACH ADVISED TO SEEK INDEPENDENT LEGAL ADVICE ON THESE AND OTHER MATTERS ARISING UNDER THIS LEASE.

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

\_\_\_\_\_  
LANDLORD:

\_\_\_\_\_  
TENANT:

\_\_\_\_\_  
LANDLORD:

\_\_\_\_\_  
TENANT:

\_\_\_\_\_  
BY:

\_\_\_\_\_  
BY:

\_\_\_\_\_  
ITS:

\_\_\_\_\_  
ITS:



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Rev. 9/2020  
Page 20 of 27

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(Multi-Tenant - Triple Net (NNN) Lease)

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Washington

My commission expires: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Washington

My commission expires: \_\_\_\_\_



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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 21 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Washington

My commission expires: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Washington

My commission expires: \_\_\_\_\_



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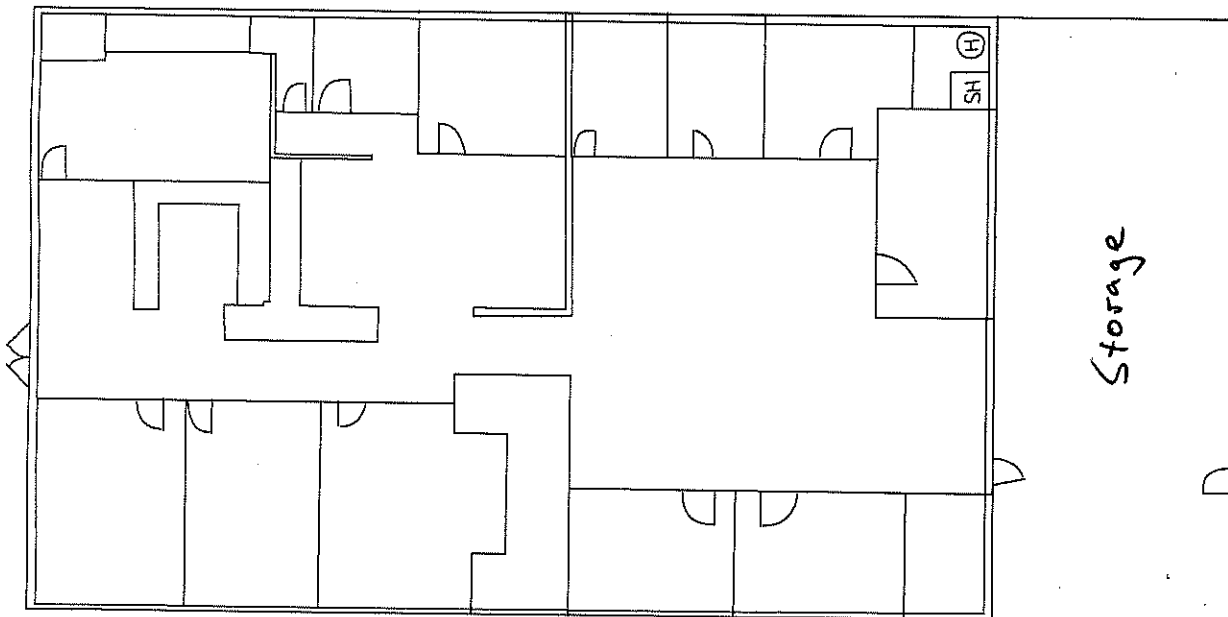
Form: MT\_NNN  
Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 22 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

**EXHIBIT A**

[Outline of the Premises]

Entire Lower Level





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Multi-Tenant NNN Lease  
Rev. 9/2020  
Page 23 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

**EXHIBIT B**

[Legal Description of the Property]

- Parcel # - 3803301153810000

- Abbreviated Legal Description: SUPPLEMENTAL MAP OF WHATCOM LOT 1-EXC NELY 10 FT THEREOF-  
LOTS 2-3-4 BLK 173-SUBJ TO COVENANT TO BIND PROPERTIES AF 920212093



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Page 24 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

**EXHIBIT C**

[Work Letter]

**CHECK IF APPLICABLE:**

1. ☐ **Improvements to be Completed by Landlord**

- A. Performance of Improvements. Subject to the terms and conditions of this Lease and any Improvement Allowance provided herein, Landlord's obligations to improve the Premises shall be limited to the work ("Landlord's Work") described below. All other work shall be performed by Tenant at its sole expense or, if performed by Landlord, shall be promptly reimbursed by Tenant. Landlord's Work shall be deemed to be "substantially complete" on the date that Landlord's notifies Tenant that Landlord's Work is complete, except for punch list items that do not impair the use or operations thereof, would not prevent Tenant from occupancy and/or performing Tenant's Work, and except for that portion of Landlord's Work, if any, which cannot be feasibly performed before Tenant completes Tenant's Work, fixturing, or decorating.

The work to be done by Landlord in satisfying its obligation to complete Landlord's Work under the Lease shall be limited to the following (check one):

☐ As identified below (check and describe all that apply);

- ☐ FLOOR: \_\_\_\_\_
- ☐ WALLS: \_\_\_\_\_
- ☐ CEILING: \_\_\_\_\_
- ☐ LIGHTING: \_\_\_\_\_
- ☐ WASHROOM(S): \_\_\_\_\_
- ☐ ELECTRICAL: \_\_\_\_\_
- ☐ HVAC: \_\_\_\_\_
- ☐ OTHER: \_\_\_\_\_

☐ As mutually agreed upon between Landlord and Tenant as follows:

- a. Within \_\_\_\_\_ days ((10) days if not filled in) after mutual acceptance of the Lease, Tenant shall prepare and submit for Landlord's review a preliminary sketch of the improvements to be performed by Landlord ("Preliminary Landlord Plan"). Landlord and Tenant shall cooperate in good faith to adopt a mutually acceptable Preliminary Landlord Plan.
- b. Upon Landlord's approval of the Preliminary Landlord Plan, Landlord shall promptly prepare (or cause to be prepared) construction documents (i.e., those plans used for submittal to the appropriate governmental bodies for all necessary permits and approvals for Landlord's Work, if any) for Tenant's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The construction documents, once approved, shall then constitute "Landlord's Improvement Plans."
- c. Landlord shall submit the Landlord's Improvement Plans to the appropriate governmental body for plan checking and issuance of necessary permits and approvals, as applicable. Landlord and Tenant shall cooperate and use commercially reasonable efforts to cause to be made any changes in the Landlord's Improvement Plans necessary to obtain such permits and approvals; provided, however, any costs and expenses resulting from the foregoing changes to Landlord's Work that exceed the Improvement Allowance shall be borne at Tenant's sole cost and expense.



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Page 25 of 27

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- B. Defects in Landlord's Work. If Tenant fails to notify Landlord of any defects in the Landlord's Work within 30 days of delivery of possession of the Premises to Tenant, Tenant shall be deemed to have accepted the Premises in their then-existing condition. If Tenant discovers any major defects in the Landlord's Work during this 30-day period that would prevent Tenant from using the Premises for the Permitted Use, Tenant shall notify Landlord and the Commencement Date shall be delayed until after Landlord has notified Tenant that Landlord has corrected the major defects and Tenant has had five (5) days to inspect and approve the Premises. The Commencement Date shall not be delayed if Tenant's inspection reveals minor defects in the Landlord's Work that will not prevent Tenant from using the Premises for the Permitted Use. Tenant shall prepare a punch list of all minor defects in Landlord's Work and provide the punch list to Landlord, which Landlord shall promptly correct.

2. ☐ **Improvements to be Completed by Tenant**

- A. Performance of Improvements. Subject to the terms and conditions of the Lease and any Improvement Allowance provided herein, Tenant shall complete, at its sole cost and expense, the work identified in the Tenant Improvement Plans (as such term is defined below) adopted by Landlord and Tenant in accordance with the provisions below ("Tenant's Work"). Tenant's Work shall be performed lien free and in a workmanlike manner, without interference with other work, if any, being done in the Premises or Property, including any of Landlord's Work, and in compliance with all laws and reasonable rules promulgated from time to time by Landlord, its property manager, architect, and contractors.

The work to be done by Tenant in satisfying its obligation to complete Tenant's Work under the Lease shall be limited to the following (check one):

☐ As identified below (check and describe all that apply);

- ☐ FLOOR: \_\_\_\_\_
- ☐ WALLS: \_\_\_\_\_
- ☐ CEILING: \_\_\_\_\_
- ☐ LIGHTING: \_\_\_\_\_
- ☐ WASHROOM(S): \_\_\_\_\_
- ☐ ELECTRICAL: \_\_\_\_\_
- ☐ HVAC: \_\_\_\_\_
- ☐ OTHER: \_\_\_\_\_

☐ As mutually agreed upon between Landlord and Tenant as follows:

- a. Within \_\_\_\_\_ days ((10) days if not filled in) after mutual acceptance of the Lease, Tenant shall prepare and submit for Landlord's review a preliminary sketch of the Tenant Improvements ("Preliminary Tenant Plan"). Landlord and Tenant shall cooperate in good faith to adopt a mutually acceptable Preliminary Plan.
- b. Upon approval of the Preliminary Tenant Plan by Landlord, Tenant shall promptly prepare construction documents (i.e., those plans used for submittal to the appropriate governmental bodies for all necessary permits and approvals for the Tenant's Work, if any) for Landlord's review and approval. The construction documents, once approved, shall then constitute the "Tenant Improvements Plans."
- c. Upon approval by Landlord, Tenant shall submit the Tenant Improvements Plans to the appropriate governmental body for plan checking and issuance of necessary permits and approvals. Tenant, with Landlord's approval, shall cause to be made any changes in the Tenant Improvements Plans necessary to obtain such permits and approvals.
- d. Landlord makes no warranty or representation of any type or nature with respect to the adequacy



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Rev. 9/2020  
Page 26 of 27

**LEASE AGREEMENT**  
(Multi-Tenant - Triple Net (NNN) Lease)

or sufficiency of the Tenant Improvements Plans for any purpose. Landlord makes no warranty or representation of any type or nature with respect to the quality, suitability, or ability of contractor or the quality of the work or materials supplied or performed with respect to the Tenant Improvements by contractor, the subcontractors, Tenant's agents, or any other person or entity.

- B. General Requirements. Tenant shall submit to Landlord, prior to the commencement of the construction of Tenant's Work, the following information for Landlord's review and approval (check all that apply):

- ☐ The names, contact names, addresses, and license numbers of all general contractors and subcontractors Tenant intends to use in the construction of Tenant's Work.
- ☐ A reasonably detailed schedule for Tenant's performance of Tenant's Work (including, without limitation, the date on which Tenant's Work will commence, the estimated date of completion of Tenant's Work, and the date on which Tenant expects to open for business in the Premises).
- ☐ Evidence of insurance as required in the Lease and any other insurance usual and customary for performance of Tenant's Work and requested by Landlord.
- ☐ Copies of all required governmental permits.

- C. Contractor Qualifications. All contractors and subcontractors to perform Tenant's Work shall be licensed contractors, capable of performing quality workmanship and working in harmony with Landlord's general contractor in the Building, if any. Upon notice from Landlord, Tenant shall stop using (or cause contractor or any subcontractor to stop using) any person or entity disturbing labor harmony with any work force or trade engaged in performing Tenant's Work or other work, labor, or services in or about the Building. All work shall be coordinated with any on-going construction work on the Building. Landlord shall have the right to disapprove, in Landlord's reasonable discretion, any contractor or subcontractor which Tenant desires to engage for Tenant's Work.

**3. Improvement Allowance**

Provided there is no uncured Event of Default by Tenant under the Lease, upon completion of Landlord's Work or Tenant's Work, as applicable, Landlord shall provide an allowance ("Improvement Allowance") toward the costs and expenses associated with improvements to the Premises in accordance with the following (check one):

- ☐ \$ \_\_\_\_\_ per rentable square foot of the Premises. The Improvement Allowance shall be used only for (choose one): ☐ Landlord's Work, or ☐ Tenant's Work, excepting \_\_\_\_\_. If costs associated with completing Tenant's Work exceed the Improvement Allowance, or if any costs of Tenant's Work are not to be paid out of the Improvement Allowance, then the excess or excluded amount shall be paid directly by Tenant.
- ☐ None; Tenant shall be obligated to pay all costs, expenses and fees associated with completing the Tenant's Work in accordance with the Tenant Improvement Plans.
- ☐ None; Landlord shall be obligated to pay all costs, expenses and fees associated with completing the Landlord's Work in accordance with the Landlord Improvement Plans, however, excepting any costs related to Tenants' furniture, cabling, fixtures and equipment, Signage, design services, and \_\_\_\_\_, and in no event in an amount exceeding \$ \_\_\_\_\_.

4. ☐ **Removal of Improvements/Surrender.** The following scope of Tenant's Work (check one):

- ☐ shall become the property of Landlord
- ☐ shall be removed by Tenant at its sole cost and expense



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Rev. 9/2020  
Page 27 of 27

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upon the expiration or earlier termination of the Lease Term: \_\_\_\_ .



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Page 1 of 2

### RENT RIDER

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This Rent Rider ("Rider") is a part of and incorporated by this reference into that certain Lease Agreement dated October 12, 2021 ("Lease") between Greg Dibble, a(n)        ("Landlord") and Whatcom County, a(n)        ("Tenant"), as the same may be amended, concerning the commercial space commonly known as        ("Premises"), which Premises are part of the real property located at 600 Dupont St,       , Bellingham, WA 98225 and commonly known as        ("Property").

- ☒ **1. BASE MONTHLY RENT SCHEDULE.** Tenant shall pay to Landlord base monthly rent during the initial Lease Term according to the following schedule:

Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
<u>11.1.2021 - 10.31.2022</u>	\$ <u>6,346.33</u>
<u>11.1.2022 - 10.31.2023</u>	\$ <u>6,536.72</u>
<u>11.1.2023 - 10.31.2024</u>	\$ <u>6,732.82</u>
<u>      </u>	\$ <u>      </u>
<u>      </u>	\$ <u>      </u>
<u>      </u>	\$ <u>      </u>

- ☐ **2. CONSUMER PRICE INDEX ADJUSTMENT ON BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the second year of the Term, which shall occur on the first day of the calendar month after the calendar month in which the Commencement Date occurs and on the first day of each year of the Term thereafter (each, an "Adjustment Date") (but not during any extended or renewal term(s) unless specifically set forth elsewhere in the Lease or set forth in this Rent Rider below). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Revised Consumer Price Index for All Urban Consumers (CPI-U): U.S. Cities Average, all items index (Reference Base 1982-84 equal 100)(the "Index"). The base monthly rent payable immediately prior to the applicable Adjustment Date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in base rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased base rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date, or if the Index is discontinued during the Lease term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the Index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent be decreased pursuant to this paragraph.

INITIALS: LANDLORD                      DATE                      TENANT                      DATE                       
LANDLORD                      DATE                      TENANT                      DATE



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 Rent Rider  
 Rev. 9/2020  
 Page 2 of 2

### RENT RIDER

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- ☒ **3. EXTENDED TERM BASE MONTHLY RENT SCHEDULE.** Tenant shall pay to Landlord base monthly rent during the Extended Term of the Lease commencing upon (check one): ☒ the date that is 36 months following the Commencement Date of the initial Term, or ☐ \_\_\_\_\_, 20 \_\_, as follows (choose one):

☐ As set forth in the Option to Extend Rider attached to the Lease

☒ **BASE MONTHLY RENT SCHEDULE.** Tenant shall pay to Landlord base monthly rent during the Extended Term of the Lease according to the following schedule:

	Lease Year (Stated in Years or Months)	Base Monthly Rent Amount
START OF OPTION 1 (3 YEARS)	<u>11.1.2024 - 10.31.2025</u>	<u>\$ 6934.80</u>
	<u>11.1.2025 - 10.31.2026</u>	<u>\$ 7142.85</u>
	<u>11.1.2026 - 10.31.2027</u>	<u>\$ 7357.13</u>
START OF OPTION 2 (3 YEARS)	<u>11.1.2027 - 10.31.2028</u>	<u>\$ 7577.85</u>
	<u>11.1.2028 - 10.31.2029</u>	<u>\$ 7805.18</u>
	<u>11.1.2029 - 10.31.2030</u>	<u>\$ 8039.34</u>

☐ **CONSUMER PRICE INDEX ADJUSTMENT ON EXTENDED TERM BASE MONTHLY RENT.** The base monthly rent shall be increased on the first day of the first year of the Extended Term of the Lease and on the first day of each year of the Extended Term of the Lease thereafter (each, an "Adjustment Date"). The increase shall be determined in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U): U.S. Cities Average, all items index (Reference Base 1982-84 equal 100) (the "Index"). The base monthly rent payable immediately prior to the applicable Adjustment Date shall be increased by the percentage that the Index published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease Year from which the adjustment is being measured. Upon the calculation of each increase, Landlord shall notify Tenant of the new base monthly rent payable hereunder. Within twenty (20) days of the date of Landlord's notice, Tenant shall pay to Landlord the amount of any deficiency in base rent paid by Tenant for the period following the subject Adjustment Date, and shall thereafter pay the increased base rent until receiving the next notice of increase from Landlord. If the components of the Index are materially changed after the Commencement Date of the Extended Term, or if the Index is discontinued during the Extended Term, Landlord shall notify Tenant of a substitute published index which, in Landlord's reasonable discretion, approximates the Index, and shall use the substitute index to make subsequent adjustments in base monthly rent. In no event shall base monthly rent for the Extended Term be decreased pursuant to this paragraph.

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_  
 LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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Page 1 of 2

### OPTION TO EXTEND RIDER

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This Option to Extend Rider ("Rider") is made part of and incorporated by this reference into that certain Lease Agreement dated October 12, 2021 ("Lease") between Greg Dibble, a(n) \_\_\_\_\_ ("Landlord") and Whatcom County, a(n) \_\_\_\_\_ ("Tenant"), as the same may be amended, concerning the leased commercial space commonly known as \_\_\_\_\_ ("Premises"), which Premises are part of the real property located at 600 Dupont St \_\_\_\_\_, Bellingham, WA 98225 and commonly known as \_\_\_\_\_ ("Property").

- 1. Extension of Lease.** Provided Tenant is not in default of any provision of the Lease beyond the applicable cure period at the time that Tenant exercises the right to extend the term of the Lease or at the time an Extended Term defined below begins, Tenant shall have Two (2) (zero, if not completed) successive options to extend the term of the Lease for Three (3) years each (each, an "Extended Term"). The term of the Lease shall be extended for the length of the Extended Term on the same terms, conditions and covenants set forth in the Lease, except that (i) the amount of the Base Rent in effect during the Extended Term shall be adjusted as set forth below (provided, however, in no event shall the base rental rate due for an Extended Term be less than the base rental rate payable in the last full calendar month of the immediately-preceding term); (ii) any periods of free or abated rent periods, tenant improvement allowances or other concessions that may have been granted to Tenant at the beginning of the initial term hereof shall be of no further for or effect during any Extended Term; and (iii) after exercise of Tenant's final Extended Term option, there shall be no further term extension or renewal options.
- 2. Notice.** To exercise its option to extend the term of the Lease, Tenant must deliver written notice of its election to extend the term of the Lease to Landlord not more than two hundred forty (240) days and not less than one hundred eighty (180) days prior to the expiration date of the then-current Lease term. Time is of the essence of this Rider.
- 3. Monthly Rent.** ~~Upon Tenant's exercise of an option to extend the term of the Lease, Landlord and Tenant shall make a good faith effort to determine and agree on the Base Rent for the Premises for the extended term of the Lease, which shall be the fair market rental rate thereof. SEE RENT RIDER FOR OPTION TERM RENT SCHEDULE.~~

~~a. **Failure to Agree on Rent.** If Landlord and Tenant are unable to agree on the fair market rental rate for the Premises for the applicable Extended Term within thirty (30) days after Tenant delivers notice of its election to exercise its option to extend, the parties shall then have ten (10) days to mutually select or appoint one real estate appraiser to determine the fair market rental rate for the Premises. Each appraiser selected or appointed pursuant to this Rider shall have received an MAI designation from the Appraisal Institute with at least ten (10) years of experience appraising commercial properties in the commercial leasing market in which the Premises are located, or equivalent experience in the commercial leasing industry. The appraiser appointed shall determine the fair market rental rate for the Premises within twenty (20) days of appointment, which determination shall be final, conclusive, and binding upon both Landlord and Tenant, and Base Rent shall be adjusted accordingly for the extended term. The appraiser's fees and expenses shall be shared equally between the parties.~~

~~b. **Failure to Appoint One Appraiser.** If Landlord and Tenant cannot mutually agree upon an appraiser, then either party may give the other party written notice that it has selected and appointed an appraiser, complete with the name, address, and other identifying information about the appraiser. The party receiving such notice shall then have ten (10) days to select and appoint its own appraiser and respond by giving written notice to the other party, containing the name, address, and other identifying information about the appraiser. If, however, the responding party fails to select and appoint an appraiser and give notice to the other party within ten (10) days, the determination of the appraiser first appointed shall be final, conclusive and binding upon both parties, and the Base Rent shall be adjusted accordingly for the~~

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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Rev. 9/2020  
Page 2 of 2

## OPTION TO EXTEND RIDER

~~applicable Extended Term. The appraiser's fees and expenses shall be shared equally between the parties.~~

~~c. **Method of Determining Rent.** The appraisers appointed shall proceed to determine the fair market rental rate within twenty (20) days following their appointment. The conclusion of the appraisers shall be final, conclusive and binding upon both Landlord and Tenant. If the appraisers should fail to agree, but the difference in their conclusions as to fair market rental rate is ten percent (10%) or less of the lower of the two appraisals, then the fair market rental rate shall be deemed to be the average of the two rates, and Base Rent shall be adjusted accordingly for the applicable Extended Term. If the two appraisers should fail to agree on the fair market rental value, and the difference between the two appraisals exceeds ten percent (10%) of the lower of the two appraisals, then the two appraisers shall promptly appoint a third appraiser. If they fail to agree on a third appraiser within ten (10) days after their individual determination of the fair market rental rate, either party may apply to the courts for the county in which the Premises are located, requesting the appointment of the third appraiser. Once appointed, the third appraiser shall promptly determine the fair market rental rate for the Premises. The third appraiser shall then take the average of the two appraisals that are closest in value, which average rate shall be final, conclusive, and binding upon both Landlord and Tenant, and Base Rent shall be adjusted accordingly for the applicable Extended Term. Each party shall pay its own legal fees (if any) and the fees and expenses for its own appraiser. In the event a third appraiser must be appointed, his or her fees and expenses shall be borne equally by the parties.~~

4. **Conflicts.** In the event of any conflicts between the terms of this Option to Extend Rider and the terms of the Lease and/or any Rent Rider, the terms of this Option to Extend Rider shall control.

INITIALS: LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_  
LANDLORD \_\_\_\_\_ DATE \_\_\_\_\_ TENANT \_\_\_\_\_ DATE \_\_\_\_\_



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Page 1 of 1

### ADDENDUM TO CBA LEASES

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The following terms are made part of and incorporated by this reference into the Lease Agreement ("Agreement") dated October 12, 2021 between Greg Dibble, a(n) \_\_\_\_\_ ("Landlord") and Whatcom County, a(n) \_\_\_\_\_ ("Tenant") concerning the leased commercial premises commonly known as \_\_\_\_\_ ("Premises"), which Premises are part of the real property located at 600 Dupont St \_\_\_\_\_, Bellingham, WA 98225 and commonly known as \_\_\_\_\_ ("Property").

LANDLORD AND TENANT AGREE AS FOLLOWS: - Tenant shall have access to 16 parking spots designated on parking map. Tenant shall be allowed to stripe and designate indicated spaces at Tenant cost and performance.

- Tenant to maintain parking lot, sidewalks, and entry ways for snow and ice shoveling, de-icing, and sweeping.

- Upstairs tenant to have access to conference room as needed for ADA clients. Must be scheduled 48 hours (2 business days) ahead of time.

- Garbage – trash is included in NNN and is in dumpster shared with neighboring business (marked on map). Any recycling or cardboard needs to be set up by tenant.

- Landlord reserves the right to remove trees, excavate earth, and place gravel on excavated areas to improve movement within parking area.

- Prepaid Rent in the amount of \$6,732.82 (Base Rent) plus \$1,735.20 (NNN) shall be due with Rent payment for January 2022 for Month 36 of initial term of Lease.

- Tenant may satisfy its insurance obligations in Section 17 through Tenant's participation in a joint self-insurance program, through the Washington Counties Risk Pool (WCRP).

All other terms and conditions of the Agreement remain unchanged and in full force and effect.

INITIALS:

Landlord/Lessor: \_\_\_\_\_ Date \_\_\_\_\_ Tenant/Lessee: \_\_\_\_\_ Date \_\_\_\_\_

Landlord/Lessor: \_\_\_\_\_ Date \_\_\_\_\_ Tenant/Lessee: \_\_\_\_\_ Date \_\_\_\_\_



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-585

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<b>File ID:</b>	AB2021-585	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	09/30/2021	<b>Entered by:</b>	DDuling@co.whatcom.wa.us		
<b>Department:</b>	Sheriff's Office	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

---

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 U.S. Department of Justice Drug Enforcement Administration for Cooperative State and Local Task Force Agreement FY2022

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See Attachment

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, 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:** October 13, 2021

**SUBJECT:** Drug Enforcement Administration (DEA) Bellingham Resident Office State and Local Task Force Agreement for Fiscal Year 2022.

Enclosed for your review and signature are two (2) original agreements between Whatcom County Sheriff's Office and the U.S. Department of Justice Drug Enforcement Administration.

**Background and Purpose**

The Whatcom Gang and Drug Task Force is co-located with the U.S. Drug Enforcement Administration (DEA) and occupies space in the DEA facility. This is a no-cost no-reimbursement agreement required by DEA for the Sheriff's Office Drug Task Force Sergeant assigned to the DEA Bellingham Resident Office State and Local Task Force at the facility.

**Funding Amount and Source**

Each agency is responsible for their own personnel costs in this agreement. The Drug Task Force Sergeant is included in existing Whatcom County Sheriff's budget.

**Difference from Previous Contract**

N/A

Please contact Undersheriff Chadwick at extension 6618 if you have any questions or concerns regarding this request.

Thank you.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Whatcom County Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	35 Sheriff's Office/ 3520 Bureau of LE & Investigations/ 352070 Drug Task Force
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	U.S. Department of Justice Drug Enforcement Administration
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract _____ Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> 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): \$ 0.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ 0.00	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
The Cooperative State and Local Agreement is required by the Drug Enforcement Administration to participate in the Bellingham Resident Office State and Local Task Force.	
Term of Contract: 10/1/2021	Expiration Date: 9/30/2022

Contract Routing:	1. Prepared by: D.Duling	Date: 9/23/21
	2. Attorney signoff: <u>Approved via email BW/OD</u>	Date: 9/23/21
	3. AS Finance reviewed: <u>Approved via email KB/OD</u>	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: _____

## **COOPERATIVE STATE AND LOCAL AGREEMENT**

### **WHATCOM COUNTY SHERIFF'S OFFICE**

This agreement is made this 1<sup>st</sup> day of October, 2021 between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Whatcom County Sheriff's Office ORI# WA0370000 (hereinafter "WCSO"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Whatcom, Skagit and San Juan Islands area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of Washington, the parties hereto agree to the following:

1. The Bellingham Resident Office Task Force will perform the activities and duties described below:
  - a. disrupt the illicit drug traffic in the area by immobilizing targeted violators and trafficking organizations;
  - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs and
  - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Washington.

To accomplish the objectives of the Bellingham Resident Office Task Force, the WCSO agrees to detail one (1) experienced officer to the Bellingham Resident Office Task Force for a period of not less than two years. During this period of assignment, the officer will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.

2. The officer assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
3. The WCSO officer assigned to the Task Force shall be deputized as a Task Force Officer of DEA pursuant to 21 U.S.C. Section 878.
4. To accomplish the objectives of the Bellingham Resident Office Task Force, DEA will assign five (5) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and officers assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.
5. The WCSO shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended,

and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.

6. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2022. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by WCSO during the term of this agreement.

For the Drug Enforcement Administration:

\_\_\_\_\_  
Frank A. Tarentino III  
\_\_\_\_\_  
Special Agent in Charge  
\_\_\_\_\_  
Title

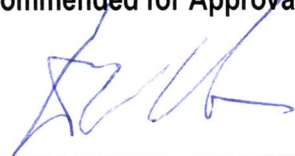
Date: \_\_\_\_\_

For the Whatcom County Sheriff's Office:

*See Attached*  
\_\_\_\_\_  
Bill Elfo  
\_\_\_\_\_  
Sheriff  
\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**WHATCOM COUNTY:**  
**Recommended for Approval:**

  
\_\_\_\_\_  
Bill Elfo, Sheriff

09/30/21  
\_\_\_\_\_  
Date

**Approved as to form:**

Approved via email BMD 9/23/21  
\_\_\_\_\_  
Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

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

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF WHATCOM     )

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham.  
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: AB2021-586

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<b>File ID:</b>	AB2021-586	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	09/30/2021	<b>Entered by:</b>	DDuling@co.whatcom.wa.us		
<b>Department:</b>	Sheriff's Office	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

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

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Drug Enforcement Administration for Program-Funded State and Local Task Force Agreement FY2022, in the amount of \$38,744.00

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

See Attachment

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, 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 *[Signature]*

**DATE:** September 23, 2021

**SUBJECT:** Drug Enforcement Administration (DEA) Bellingham Resident Office State and Local Task Force Agreement for Fiscal Year 2022.

Enclosed for your review and signature are two (2) original agreements between Whatcom County Sheriff's Office and the U.S. Department of Justice Drug Enforcement Administration.

**Background and Purpose**

This agreement provides for reimbursement of overtime for two Sheriff's Office Detectives when assigned and working as a "Task Force Detective" at the DEA Bellingham Resident Office Task Force for Fiscal Year 2022.

**Funding Amount and Source**

\$38,744.00 from the U.S. Department of Justice, Drug Enforcement Administration.

**Difference from Previous Contract**

Increase of \$383.50 from previous contract.

Please contact Undersheriff Chadwick at x6618 if you have any questions or concerns regarding this request.

Thank you.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Whatcom County Sheriff's Office
Division/Program: (i.e. Dept, Division and Program)	35 Sheriff's Office/ 3520 Bureau of LE & Investigations/ 352070 Drug Task Force
Contract or Grant Administrator:	Doug Chadwick, Undersheriff
Contractor's / Agency Name:	U.S. Department of Justice Drug Enforcement Administration
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> 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): \$ 38,744.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ 38,744.00	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
This agreement provides for reimbursement of overtime for Sheriff's Office Detectives assigned to Drug Enforcement Administration (DEA) Bellingham Resident Office Task Force Operations Fiscal Year 2022.	
Term of Contract: 10/1/2021	Expiration Date: 9/30/2022

Contract Routing:	1. Prepared by: D. Duling	Date: 9/23/21
	2. Attorney signoff: <u>Approved via email BJD</u>	Date: <u>9/23/21</u>
	3. AS Finance reviewed: <u>Approved via email BJD</u>	Date: <u>9/23/21</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: _____

**PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT**  
**WHATCOM COUNTY SHERIFF'S OFFICE**

This agreement is made this 1<sup>st</sup> day of October, 2021, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Whatcom County Sheriff's Office ORI#WA0370000 (hereinafter "WCSO"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Whatcom, Skagit and San Juan Islands area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the state of Washington, the parties hereto agree to the following:

1. The Bellingham Resident Office Task Force will perform the activities and duties described below:
  - a. disrupt the illicit drug traffic in the area by immobilizing targeted violators and trafficking organizations;
  - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
  - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Washington.
2. To accomplish the objectives of the Bellingham Resident Office Task Force, the WCSO agrees to detail two (2) experienced officers to the Bellingham Resident Office Task Force for a period of not less than two years. During this period of assignment, the WCSO officers will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The WCSO officers assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The WCSO officers assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.
5. To accomplish the objectives of the Bellingham Resident Office Task Force, DEA will assign seven (7) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide

necessary funds and equipment to support the activities of the DEA Special Agents and the WCSO officer assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

6. During the period of assignment to the Task Force, the WCSO will remain responsible for establishing the salary and benefits, including overtime, of the officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the WCSO for overtime payment. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-12, Step 1, of the general pay scale for the Rest of United States. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted **monthly or quarterly** on a fiscal year basis, and which provides the names of the investigators who incurred overtime for DEA during the invoiced period, the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total cost for the invoiced period. Invoices must be submitted at least quarterly within 30 days of the end of the invoiced period. **Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."**
7. In no event will the WCSO charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The WCSO shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The WCSO shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The WCSO shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of six (6) years after termination of this agreement, whichever is later.
10. The WCSO shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.
11. The WCSO agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The WCSO acknowledges that this agreement will not take effect and no Federal funds will be awarded to the WCSO by DEA until the completed certification is received.

12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the WCSO shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.
13. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2022. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by WCSO during the term of this agreement.

For the Drug Enforcement Administration:

\_\_\_\_\_  
Frank A. Tarentino III

Date: \_\_\_\_\_

\_\_\_\_\_  
Special Agent in Charge

\_\_\_\_\_  
Title

For the Whatcom County Sheriff's Office:

*See Attached*  
\_\_\_\_\_  
Bill Elfo

Date: \_\_\_\_\_

\_\_\_\_\_  
Sheriff

\_\_\_\_\_  
Title

**WHATCOM COUNTY:**  
**Recommended for Approval:**

  
\_\_\_\_\_  
Bill Elfo, Sheriff

09/30/21  
\_\_\_\_\_  
Date

**Approved as to form:**

Approved via email Bw/BO 9/23/21  
\_\_\_\_\_  
Prosecuting Attorney

\_\_\_\_\_  
Date

**Approved:**

Accepted for Whatcom County:

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

\_\_\_\_\_  
Date

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF WHATCOM     )

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

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



U. S. Department of Justice  
Drug Enforcement Administration  
Bellingham Resident Office  
1855 Barkely Blvd., Howe Pl. 1  
Bellingham, WA 98228

[www.dea.gov](http://www.dea.gov)

September 22, 2021

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

SUBJECT: Bellingham Resident Office State and Local task Force Agreement Renewal for Fiscal Year 2022

Dear Sheriff Elfo:

Fiscal Year 2022 begins October 1, 2021, requiring the renewal of our State and Local Task Force Agreement. This year's agreement will be for the period October 1, 2021, through September 30, 2022. The maximum reimbursable annual overtime rate is \$19,372.00.

I have enclosed the following documents for your signature: Bellingham Resident office State and Local Task Force Agreement; OJP Form 4061/6; Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and Drug Enforcement Administration Asset Forfeiture Sharing Memorandum of Understanding.

Please sign and date the agreement, OJP Form 4061/6, and memorandum of understanding where indicated and return the originals in the self-addressed, stamped envelope provided by September 30, 2021. Copies will be provided to your office after Special Agent in Charge Frank A. Tarentino III, signs the agreements.

I look forward to completing this process and working with your agency in the next fiscal year. Detective VandenBos and Detective Weatherby are great assets to the federal, state, and local law enforcement community.

Sincerely,

Jason Webber  
Resident Agent in Charge  
Bellingham Resident Office

0 • \*

19,372 • +

19,372 • +

38,744 • \*



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-588

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<b>File ID:</b>	AB2021-588	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/01/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and San Juan County for Whatcom County Veteran Service Officer support services to San Juan County resident veterans, in an amount not to exceed \$10,000

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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

## MEMORANDUM

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** San Juan County – Veteran Service Officer Support Interlocal Agreement  
**DATE:** October 1, 2021

---

Attached is an interlocal agreement between Whatcom County and San Juan County for your review and signature.

- **Background and Purpose**

When veterans are discharged from the military there can be a need to connected with Veterans Affairs (VA) related services that benefit them and/or their family members. The process to access benefits and services can be challenging and Veterans Service Officers (VSO) help to navigate this system. VSOs can assist veterans and their families in many ways, including answering questions, advising, and educating individuals and groups on what benefits are available from federal, state, county, and local resources, and assisting persons in completing and filing benefit claims representing individuals in VA hearings.

VSO's are trained and accredited by the VA or other recognized organizations to provide assistance to veterans, their dependents, and survivors. This includes not only applying for federal and state benefits but also providing information on resources related to the following: Compensation and Pension, Health Care, Education & Training, Employment, Burial & Survivor, Housing, Transportation, Military Records.

Veterans living in San Juan County do not have an accredited VSO that they can reach out to and would like to access the services of Whatcom County's VSO. Whatcom's Federally accredited VSO will provide service to San Juan County resident veterans.

- **Funding Amount and Source**

San Juan County will reimburse Whatcom County at a rate of \$200/initial claim and \$100/subsequent claim submitted to the Federal VA by Whatcom County's VSO. Funding for this Agreement will not exceed \$10,000. These funds will be included in the 2021 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Ann Beck, Human Services Supervisor at 360-778-6055 ([ABeck@co.whatcom.wa.us](mailto:ABeck@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)), if you have any questions or concerns regarding this request.

<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>				Whatcom County Contract No. _____		
Originating Department:			85 Health			
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services /Veterans			
Contract or Grant Administrator:			Elizabeth Witowski			
Contractor's / Agency Name:			San Juan County			
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:				
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC: _____		
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)				
Is this a grant agreement?		If yes, grantor agency contract number(s): _____		CFDA#: _____		
Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>					
Is this contract grant funded?		If yes, Whatcom County grant contract number(s): _____				
Yes <input type="checkbox"/>	No <input type="checkbox"/>					
Is this contract the result of a RFP or Bid process?		Contract Cost Center:				
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s): _____				
Is this agreement excluded from E-Verify?		No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.		
If YES, indicate exclusion(s) below:						
<input type="checkbox"/> Professional services agreement for certified/licensed professional.						
<input type="checkbox"/> Contract work is for less than \$100,000.			<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).			
<input type="checkbox"/> Contract work is for less than 120 days.			<input type="checkbox"/> Work related subcontract less than \$25,000.			
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).			<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.			
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b>				
Not to exceed \$10,000		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 agreement provides reimbursement of services provided by Whatcom County's Veteran Services Officer to San Juan County resident veterans.						
Term of Contract:	15 Months		Expiration Date:	12/31/2022		
Contract Routing:	1. Prepared by:	EW			Date:	09/15/2021
	2. Health Budget Approval:	KR/JG			Date:	9/28/21
	3. Attorney signoff:	RB			Date:	09/30/2021
	4. AS Finance reviewed:	M Caldwell			Date:	9/29/21
	5. IT reviewed (if IT related):				Date:	
	6. Contractor approved:				Date:	
	7. Submitted to Exec.:				Date:	
	8. Council approved (if necessary):	AB2021-588			Date:	
	9. Executive signed:				Date:	
	10. Original to Council:				Date:	

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN  
WHATCOM COUNTY  
AND  
SAN JUAN COUNTY

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

1. PURPOSE: The purpose of this agreement is to provide Whatcom County veteran services to San Juan County veterans.

2. RESPONSIBILITIES:

Whatcom will:

- A. Provide self-referred San Juan Veterans direct service through virtual, in-person, phone, and/or email communication in a Federally Accredited VSO capacity to the Veterans Affairs Administration.
- B. Maintain Federal VSO accreditation through Washington State Department of Veterans Affairs.
- C. Provide a quarterly report to San Juan for reimbursement.

San Juan will:

- A. Reimburse Whatcom for direct service to San Juan County veterans.

3. FUNDS PROVIDED AND METHOD OF PAYMENT: San Juan County agrees to reimburse Whatcom at a rate of \$200 per initial claim and \$100 per subsequent/secondary claim submitted to the Federal VA, up to \$10,000. Whatcom shall submit invoices by the 25<sup>th</sup> of the month, following the month of service. Invoices shall be sent to PO Box 638 – Friday Harbor, WA 98250 or [Mileneh@sanjuanco.com](mailto:Mileneh@sanjuanco.com). San Juan will make payment to Whatcom no more than thirty (30) days after invoices are received and approved by San Juan.
4. TERM OF AGREEMENT: The start date of this agreement is September 15, 2021 and shall be in effect through December 31, 2022.
5. EXTENSION: The duration of this agreement may be extended by mutual written consent of the parties.
6. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for the administration of this agreement and for coordinating and monitoring performance under this agreement. In the event such representatives are changed, the party making the change shall notify the other party:

Whatcom's representative shall be:

Elizabeth Witowski, Veterans Specialist – [ewitowsk@co.whatcom.wa.us](mailto:ewitowsk@co.whatcom.wa.us)  
Whatcom County Health Department  
509 Girard Street, Bellingham WA 98225  
(360) 778-6050

San Juan's representative shall be:

F. Milene Henley, San Juan County Auditor – [Mileneh@sanjuanco.com](mailto:Mileneh@sanjuanco.com)  
San Juan County  
PO Box 638, Friday Harbor WA 98250  
(360) 370-7558

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

8. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law and further agrees to save, indemnify, defend, and hold harmless the other party from any such liability. It is further provided that no liability shall attach to Whatcom County by reason of entering into this agreement, unless expressly provided herein.
9. TERMINATION: Any party hereto may terminate this agreement upon (30) days notice in writing either personally delivered or mailed to the party's last known address for the purposes of giving notice under this paragraph. If this agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
10. CHANGES, MODIFICATIONS, AMENDMENTS, OR WAIVERS: The agreement may be changed, modified, amended, or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this agreement shall not be considered a waiver of any prior or subsequent breach.
11. SEVERABILITY: In the event of any term or condition of this agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this agreement are declared severable.
12. ENTIRE AGREEMENT: This agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.
13. OTHER PROVISIONS: San Juan County will comply with all applicable Federal and State requirements that govern this agreement.

Each signatory below to this Agreement 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.

**WHATCOM COUNTY:**  
**Recommended for Approval:**

\_\_\_\_\_  
Ann Beck, Human Services Supervisor                      Date

\_\_\_\_\_  
Erika Lautenbach, Director                                      Date

**Approved as to form:**

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

**Approved:**  
Accepted for Whatcom County:

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

**CONTRACTOR INFORMATION:**

San Juan County  
PO Box 638  
Friday Harbor, WA 98250

**Signature Block**

**San Juan County Agreement Number:**

**Whatcom County Contract Number:**

**WHATCOM COUNTY**

Satpal Sidhu  
County Executive

(see page 2 for signature)  
\_\_\_\_\_ Date

**APPROVED AS TO FORM ONLY**  
San Juan County Prosecuting Attorney  
Jonathan Cain

\_\_\_\_\_  
Date

**SAN JUAN COUNTY**

**Auditor's Office**  
F. Milene Henley  
Auditor

\_\_\_\_\_  
Date

**FINAL APPROVAL**  
County Manager  
Michael J. Thomas

\_\_\_\_\_  
Date



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-604

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<b>File ID:</b>	AB2021-604	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/15/2021	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and National Service Office for Nurse-Family Partnership to provide technical support and training, in the estimated amount of \$42,444

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Staff Memo, Proposed Agreement

## MEMORANDUM

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** National Service Office for Nurse-Family Partnership – Implementation Agreement  
**DATE:** October 15, 2021

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Attached is an Agreement between Whatcom County and Nurse-Family Partnership for your review and signature.

- **Background and Purpose**

Whatcom County began implementing the Nurse-Family Partnership Program in 2012 as an evidence-based model that uses home visiting nurses to support low-income, first time mothers. This contract provides funding for technical support and training. This Agreement was effective on 04/01/2021, however, delays in the review and approval process between both parties prevented the Agreement from further processing until now.

- **Funding Amount and Source**

The cost of this Agreement is expected to be \$21,024 for the 4/1/21 – 3/31/22 contract period and \$21,420 for the 4/1/22 – 3/31/23 contract period. Funding is provided by the Nurse-Family Partnership General Fund. These funds are included in the 2021 budget. Council approval is required as funding will exceed \$40,000.

- **Differences from Previous Contracts**

Similar agreements have been in place with this Contractor since 2012. This Agreement is different from the most recent Agreement (WC Contract #201605005) in the following ways:

1. Updated current practices.
2. Updated fee schedule from the 2021-2022 and 2022-2023 contract period.
3. Updated service descriptions.
4. Incorporation of new Model Elements (key parameters of the program)

Please contact Judy Ziels, Public Health Nurse Supervisor at 360-778-6130 ([JZiels@co.whatcom.wa.us](mailto:JZiels@co.whatcom.wa.us)) or Kathleen Roy, Assistant Director at 360-778-6007 ([KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)), if you have any questions or concerns regarding this request.

<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: <i>(i.e. Dept. Division and Program)</i>		8530 Community Health / 853010 Community Health Admin	
Contract or Grant Administrator:		Judy Ziels	
Contractor's / Agency Name:		National Service Office for Nurse-Family Partnership	
Is this a New Contract? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If not, is this an Amendment or Renewal to an Existing Contract? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input type="checkbox"/> No <input type="checkbox"/>
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If No, include WCC: _____	
Already approved? Council Approved Date: _____		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, grantor agency contract number(s): _____		CFDA#: _____
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s): _____		
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Contract Cost Center: 621215	
If yes, RFP and Bid number(s): _____		Sole Source	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>			
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input 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):  Varies depending on services provided.		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
Summary of Scope: This Agreement provides technical support and training to ensure that Whatcom's Nurse-Family Partnership Program maintains model fidelity and delivers program results, as needed.			
Term of Contract:		3 Years	
Expiration Date:		3/31/24 or Until Superseded	
Contract Routing:		1. Prepared by: JT Date: 08/25/2021	
		2. Health Budget Approval: JG Date: 08/25/2021	
		3. Attorney signoff: RB Date: 10/15/2021	
		4. AS Finance reviewed: M Caldwell Date: 10/15/21	
		5. IT reviewed (if IT related): Date: _____	
		6. Contractor approved: Date: _____	
		7. Submitted to Exec.: Date: _____	
		8. Council approved (if necessary): AB2021-604 Date: _____	
		9. Executive signed: Date: _____	
		10. Original to Council: Date: _____	

## **Nurse-Family Partnership Implementation Agreement**

This Agreement ("Agreement"), for the period April 1, 2021, through March 31, 2024, is by and between Whatcom County("Network Partner") and Nurse-Family Partnership, a Colorado nonprofit corporation ("NFP") (together, the "Parties").

### **RECITALS:**

- A. Whereas, the Nurse-Family Partnership® Program (the "Program") is an evidence-based program developed on the basis of randomized controlled trial research to yield certain benefits for low-income, first-time mothers and their children ("Program Benefits").
- B. Whereas, the Program Benefits can be described generally as helping low-income, first-time mothers develop behaviors that enable them to have healthier pregnancies, be better parents, have emotionally and physically healthier children, and attain greater economic self-sufficiency.
- C. Whereas, the Program implementation by Network Partner must be based upon key parameters ("Model Elements") identified through research and refined based upon the Program's experience since 1997 and attached and incorporated herein to this Agreement as Exhibit A, Nurse-Family Partnership Model Elements.
- D. Whereas, Network Partner desires and intends to implement the Program to serve low-income, first-time mothers in Network Partner's geographic area and to represent itself to the public and be known to the public as being affiliated with the Nurse-Family Partnership Program.
- E. Whereas, NFP desires and intends to operate in the best interests of mothers and children and to guide and support the Program implementation process in a manner that will help the Network Partner obtain Program Benefits for the mothers and children that Network Partner serves.
- F. Accordingly, the Parties wish to enter into this Agreement to memorialize the mechanisms and means by which Network Partner shall implement the Program and NFP shall support such implementation. The Parties intend to remain in a contractual relationship for the period described in Section V herein and thereafter, so long as funding is available to both Parties for this purpose.

### **AGREEMENT:**

In consideration of the foregoing recitals, which are incorporated herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### **I. DEFINITIONS.**

- A. Agreement-Specific Definitions. In addition to terms defined above and elsewhere in this Agreement, the following terms shall have the meanings set forth below:
  - 1. "NFP Data Collection System" or "NFP DCS" means the software system that NFP makes available to Network Partner, into which designated, NFP-approved Network Partner personnel enter data collected about Clients and the Program, and from which the Parties can obtain reports to help manage and evaluate program implementation and results.

2. "Administrator" means a person with fiscal and quality oversight, operational coordination responsibilities, and/or evaluation responsibility for the Program's management.
  3. "Client" means a low-income, first-time mother who is enrolled in the Program implemented by Network Partner.
  4. "Effective Date" means the date first noted above and upon which this Agreement becomes effective.
  5. "Fidelity to the Model" means implementing the Program in a manner consistent with the Model Elements and therefore maximizing the likelihood of achieving results comparable to those measured in Research.
  6. "Electronic Visit-to-Visit Guidelines™" or "E-Guidelines™" means NFP's written guidance for how a Nurse Home Visitor schedules and conducts visits with Clients during the Clients' participation in the Program.
  7. "Location" means the work address of a Program Supervisor.
  8. "Nurse Home Visitor" or "NHV" means a registered professional nurse employed by Network Partner who spends at least 20 (twenty) hours per week, or 0.5FTE, whichever is greater, delivering the Program to Clients.
  9. "Program Supervisor" means a registered professional nurse who supervises up to eight Nurse Home Visitors who implement the Program on behalf of Network Partner. A Program Supervisor is also known and referred to as a "Nurse Supervisor."
  10. "Research" means any activity, including program evaluation and/or quality improvement activities, (i) that would, according to Federal regulations, require review by an Institutional Review Board ("IRB"), or (ii) that could be expected to yield generalizable knowledge that could be shared publicly with the professional, academic, and/or lay communities.
  11. "Team" means a half- to full-time Program Supervisor and up to eight (8) Nurse Home Visitors who report to the Program Supervisor. A half-time supervisor can supervise up to four (4) Nurse Home Visitors.
  12. "Implementing Entity" or "IE" means a means a private, state, or local organization responsible for delivering the NFP Program within a specific geographical area.
  13. "NFP Community Website" means the website hosted by the national office of NFP at which Network Partner personnel may access resources related to the Program.
  14. "Nurse Consultant" means a registered nurse provided by the National Service Office ("NSO") of NFP, who has been trained by the NSO and is qualified to consult with Network Partner on matters related to the Program.
- B. "Proprietary Property" means all of (i) the Program, including facilitators and handouts, (ii) the Model Elements, (iii) the name "Nurse-Family Partnership" and the acronym "NFP" when used in connection with the NFP Logo and the goodwill associated therewith, (iv) all NFP Community Website and NFP DCS website content, and (v) the copyrighted materials and other materials used in the Program as of the date hereof that would be designated as protectable intellectual property under applicable law, including, but not limited to, all modifications, additions, updates, and derivative works thereof and all of the rights of NFP and its licensors associated with this property. Proprietary Property shall also include, individually and collectively, all ideas, concepts, designs, methods, inventions, modifications, improvements, new uses, and discoveries which are conceived and/or made in the performance of the responsibilities stated under this Agreement by one or more of Network Partner, NFP, or its licensors, whether they are incorporated into the Program or the Proprietary Property. NFP and its licensors reserve the right to modify the Proprietary Property from time to time in accordance with collected data, Research, and current modalities of delivery of the Program and for any other reason NFP or its licensors, in their sole and absolute discretion, deem appropriate. NFP will provide Network Partner with reasonable notice of those

modifications. NFP and its licensors shall retain ownership and all rights to all Proprietary Property, whether modified or not by Network Partner.

- C. General Application. Unless a clear contrary intention appears, words used with initial-capitalized letters shall have the meanings set forth in this Agreement, and (i) the singular includes the plural and vice versa, (ii) reference to any document means such document as amended from time to time, (iii) "include" or "including" means including without limiting the generality of any description preceding such term, and (iv) the term "or" is not exclusive.

## II. NFP OBLIGATIONS; RIGHTS.

- A. NFP grants to Network Partner a non-exclusive limited right and license to use the Proprietary Property for carrying out Network Partner's obligations under this Agreement in the geographic area within which Network Partner's Nurse Home Visitors serve Clients. Network Partner shall not use the Proprietary Property in connection with any social impact bond or pay-for-success contract, including responses to solicitations for such agreements, without NFP's prior written consent. NFP reserves the right to modify the Proprietary Property from time to time in accordance with the collected data, Research, and current modalities of Program delivery. NFP will provide Network Partner with reasonable notice of Program modifications. NFP shall retain ownership and all rights to any Proprietary Property, whether modified or not by Network Partner. In any event, all software and NFP DCS content, excluding Network Partner's and other Implementing Entities' data, shall remain the sole property of NFP.
- B. NFP will provide the support described in Exhibit B, Nurse-Family Partnership Support, attached and incorporated herein, to help Network Partner implement the Program.
- C. NFP reserves the right to communicate directly with Network Partner's funders to report on Network Partner's progress, learn more about funding decisions, and be informed of actions that may affect Network Partner's Clients.
- D. NFP shall submit invoices to Network Partner for services provided to Network Partner, listing a date of provision, a description of each such service, and amounts based upon the fee schedule provided in Exhibit C, Fees for Nurse-Family Partnership Services, attached and incorporated herein.
- E. NFP may, from time to time, request that Network Partner collect additional data and/or participate in Research initiated by NFP and intended to improve the NFP model or implementation of the model. The decision to participate in such Research is, however, entirely up to Network Partner.
- F. NFP, independently or jointly with Network Partner, may publish or present NFP-related information or Program results in Research reports, books, book chapters, peer-reviewed journal articles, and at academic or professional conferences, always giving due credit to the Parties involved and recognizing the rights of the individuals doing the work. NFP will not identify Network Partner in these materials without Network Partner's prior written authorization.
- G. NFP shall provide data and reporting services on behalf of Network Partner to Washington State Department of Health or any other agency in a manner that would not violate HIPAA if done by Network Partner.

- H. Exhibit D, HIPAA Business Associate Addendum (the “BAA”) is hereby attached and incorporated into this Agreement.

### III. NETWORK PARTNER OBLIGATIONS.

- A. Network Partner will make best efforts to implement the Program with Fidelity to the Model and will undertake the steps described in Exhibit E, Network Partner Responsibilities, attached and incorporated herein, to do so.
- B. Network Partner shall notify NFP within three (3) business days of learning of funding decisions that may materially affect Network Partner’s delivery of the Program and/or impact Clients’ ability to complete the Program.
- C. Network Partner will take all appropriate steps to maintain Client confidentiality and obtain any necessary written Client consents for data analysis or disclosure of protected health information, in accordance with applicable federal and state laws, including, but not limited to, authorizations, data use agreements, business associate agreements, as necessary.
- D. Network Partner assumes responsibility for knowledge of and compliance with the State Nurse Practice Act of its state, state laws, regulations, and licensing requirements pertaining to nursing practice and state laws and regulations pertaining to mandatory reporting.
- E. Network Partner’s Nurse Home Visitors, Program Supervisors, and Administrators shall complete all required NFP Education. Nurse Home Visitors and Program Supervisors who leave the Program for two (2) years or longer and then return must attend NFP Education before visiting Clients and resuming Program delivery. Network Partner shall ensure that Nurse Home Visitors are able to provide care to Clients in a manner consistent with the NFP E-Guidelines™.
- F. When requested by NFP, Network Partner will make reasonable efforts to collect additional data and/or participate in Research intended to improve the NFP model or implementation of the model. The decision as to whether to participate in such Research is, however, entirely up to Network Partner.
- G. To avoid becoming involved in Research that conflicts with implementing the Program with Fidelity to the Model, Network Partner shall request NFP’s permission prior to participating in any Research that is (1) initiated by a party other than NFP and (2) that involves Program staff or explicitly targets the families that are enrolled in the Program. NFP shall review and approve or disapprove Network Partner’s request for participation in such Research on a timely basis and shall not unreasonably withhold such approval.
- H. Network Partner will inform NFP of Network Partner proposals to publish or present NFP-related information in research reports, books, book chapters, peer-reviewed journal articles, and at academic or professional conferences. Results of the Program herein outlined may be published by Network Partner, or jointly by Network Partner and NFP, always giving due credit to the Parties involved and recognizing the rights of the individuals doing the work.
- I. Network Partner is authorized to reproduce certain published materials specified below and used in the implementation of the Program so long as (1) this Agreement is in effect, (2) Network Partner uses the reproductions solely for Program implementation, and (3)

Network Partner does not sell or otherwise distribute the reproductions to any third party not involved in Network Partner's implementation of the Program.

1. The published materials covered by this authorization are delivered to Nurse Home Visitors as part of the NFP education materials in sets referred to as the E-Guidelines™. These are available electronically/digitally in the online eGuidelines system
  2. The published materials bear notices indicating copyright by any of the following:
    - a) University of Colorado
    - b) University of Colorado Health Sciences Center
    - c) University of Colorado at Denver and Health Sciences Center
    - d) Nurse-Family Partnership
  3. NFP has the right to grant permission to reproduce materials specified above and that bear the University of Colorado copyright notice under the terms of a Memorandum of Understanding ("MOU") dated March 31, 2003, between the University of Colorado Health Sciences Center, now known as University of Colorado at Denver and Health Sciences Center, and NFP. The MOU gives NFP an exclusive, perpetual, royalty-free right and license to use copyrighted materials and other materials used in the Program for the purpose of implementing the Program to serve low-income, first-time mothers and their families.
  4. The corresponding Spanish-language versions of these materials are also covered by this authorization.
  5. Network Partner may not authorize any other entity to reproduce the materials without prior written permission from NFP.
- J. NFP represents to Network Partner and Network Partner understands and agrees that all Proprietary Property and all associated intellectual property rights are owned exclusively by NFP and its licensors. Network Partner shall use the Proprietary Property solely for carrying out Network Partner's obligations under this Agreement and shall not share the Proprietary Property with third parties or modify any Proprietary Property without the prior express written permission of NFP. Network Partner may not duplicate, distribute or provide access to the Proprietary Property to any individual or organization, except as authorized by this Agreement. Network Partner may allow only trained, NFP-authorized users to access the NFP DCS. Network Partner shall retrieve all Proprietary Property from departing employees. Duties of confidentiality and use of the Proprietary Property under this Agreement shall not expire.
- K. Maintenance, Protection and Promotion of the Nurse-Family Partnership® Program. Network Partner agrees to use all reasonable means to protect, encourage and promote the Nurse-Family Partnership name and Program. NFP and Network Partner have a mutual responsibility to support and promote each other, as each of the Party's activities reflect on the national image of Nurse-Family Partnership and on the image of Nurse-Family Partnership in the state in which the Network Partner is located. Network Partner shall take all reasonable actions necessary to incorporate the Nurse-Family Partnership Marks and name into any Network Partner material associated with the Program. In all marketing materials related to the Program, Network Partner shall take all reasonable actions to use the Nurse-Family Partnership name and make its Program readily recognizable to the public as an integral part of the Nurse-Family Partnership.

#### IV. FEES AND PAYMENT.

##### A. Fees associated with NFP services in support of an Implementing Entity are as follows:

1. Education Services. NFP provides-Nurse-Family Partnership education for Nurse Home Visitors, Program Supervisors, and Network Partner Administrators. This fee applies once for each individual Nurse Home Visitor, Program Supervisor, and Administrator working for the Network Partner. Fees will be invoiced to Network Partner when participants attend the education sessions. The Education Fees are calculated based on the calendar year.
  - a) Nurse Home Visitor Education Fees. Required education for Nurse Home Visitors (“NHV”) consists of one instructor-led education unit supported by distance education components. All Program Supervisors who have never taken NHV education or who completed it more than two years prior to being promoted to Program Supervisor are required to attend NHV education as well as Program Supervisor education.
  - b) Program Supervisor Education Fees. For Program Supervisors, required education consists of Nurse Home Visitor education plus two instructor-led education units supported by distance education components and nurse consultation.
  - c) Network Partner Administrator Orientation. Administrator orientation is a two-day instructor-led education session in Denver. Administrator orientation is required for new Administrators within six (6) months of being hired. An additional instructor-led Administrator education session is also offered
  - d) Nurse-Family Partnership Education Materials Fee. Contributes toward the cost of the following materials:
    - (1) Nurse-Family Partnership Orientation and Education Materials.
    - (2) Set of Prenatal, Infancy and Toddler Guidelines (the Electronic Visit to Visit Guidelines™ or E-Guidelines™).
    - (3) A series of additional nursing practice and program management resources tied to implementation of the Program.
2. NFP Network Partner Program Support. This is an annual fee, which is due on the Effective Date and each anniversary thereof and is based on the number of funded Nurse Home Visitors per team. This annual fee is billed per each active team per year and contributes to covering costs associated with the following:
  - a) NFP DCS. Services related to third party data collection systems are not covered by this Agreement. Fees for supporting Network Partner's use of third-party data collection systems will be in addition to the Annual Program Support Fee.
  - b) Program Quality System and Reporting.
  - c) Ongoing Nurse-Family Partnership Nurse Home Visitor, Program Supervisor, and Administrator education; resource library; conference calls; web forums; Nurse-Family Partnership community resources; and updating NFP E-Guidelines™, educational materials, and supporting materials.
  - d) Marketing and Communications consultation and support, including marketing and community outreach materials (brochures, posters, etc.).

- e) Policy and Government Affairs, including advocacy and educational work at federal and state levels.
- f) Nurse Consultation. Contributes to costs associated with a NFP Nurse Consultant providing the following support to Program Supervisors:
  - (1) Helping each Program Supervisor develop an annual plan for implementation.
  - (2) Monitoring reports based on each Program Supervisor and her/his team's activity and performance.
  - (3) Ongoing email support for each Program Supervisor and periodic regular calls with each Program Supervisor.
  - (4) Periodic visits to each Program Supervisor with potential travel with each Program Supervisor and/or selected nurse home visitors.
  - (5) Model implementation coaching and consultation with each Program Supervisor.
- 3. Program Supervisor Replacement Fee. A one-time fixed fee is charged for extra support when a replacement Program Supervisor is hired by an exiting team, and a vacant position is thereby filled.
- 4. Team Addition (same location) Fee. A one-time fixed fee is charged for extra support when a team is added at the same location.
- 5. Regional Expansion (new location) Fee. A one-time fixed fee is charged for extra support when the Network Partner adds a new Team at a new geographical location.
- B. Fee prices are subject to change in accordance with Section IV D. below.
- C. All fees are based upon NFP's standard terms of invoicing and payment, as follows:
  - 1. Education Fees are invoiced when individuals attend in-person education sessions. No special reporting or documentation is provided with the invoice(s), except as required by Section III.C.
  - 2. NFP Program Partner Program Support Fee is invoiced on the Effective Date and each anniversary thereof to cover each ensuing year and are due in 30 days. No special reporting or documentation is provided with the invoice(s), except as required by Section III.C.
  - 3. Program Supervisor Replacement Fee is invoiced when the new Program Supervisor is hired. No special reporting or documentation is provided with the invoice(s), except as required by Section III.C.
  - 4. Team Addition Fee (same location) is invoiced on the approved Start Date of the new Team. No special reporting or documentation is provided with the invoice(s), except as required by Section III.C.
  - 5. Regional Expansion Fee (new location) is invoiced on the approved Start Date of the new Team. No special reporting or documentation is provided with the invoice(s), except as required by Section III.C.
- D. NFP shall invoice Network Partner for services provided to Network Partner based upon the fee schedule set forth in Exhibit C, Fees for Nurse-Family Partnership Services. The attached fee schedule sets out prices for the next two years. NFP reserves the right to

change the fees set forth in Exhibit C during the term of this Agreement but not more often than annually. NFP will notify Network Partner at least one year prior to any such change becoming effective.

E. Invoices will be sent to:

Network Partner: Whatcom County Health Department  
Attention: Business Office  
Address: 509 Girard St.  
Bellingham, WA 98225

Telephone: 360-778-6000

Email: [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us)

X Please check this box if you would prefer to receive invoices by email

F. Network Partner will send payments, identifying the NFP invoice, within 30 days of invoice to the address below. Upon agreement, payments may be made by electronic funds transfer (EFT).

Nurse-Family Partnership  
Attention: Finance Department  
1900 Grant Street, Suite 400  
Denver, CO 80203  
or to: [ar@nursefamilypartnership.org](mailto:ar@nursefamilypartnership.org)

V. TERM AND DEFAULT.

- A. Term of Agreement. This Agreement shall remain in full force and effect through March 31, 2024, (the "Term") unless it is terminated by mutual agreement of the Parties or as otherwise provided below.
- B. Term Extension. Upon April 1, 2024, and each anniversary of that date, this Agreement shall automatically extend for an additional year unless either party has provided not less than sixty (60) days' notice to the other of its intention to terminate the Agreement on the upcoming anniversary date.
- C. Early Termination. The Parties agree that they intend to and will engage in mutual efforts to keep this Agreement in force for the Term, because it requires approximately three years for the Clients to complete the Program. Recognizing, however, that circumstances beyond the control of the Parties may compel one Party to desire termination before completion of the Term or an extension thereof, either Network Partner or NFP may terminate this Agreement at any time by giving the other party written notice of not less than sixty (60) days.
- D. Network Partner Termination for Lack of Funding; Convenience. If Network Partner terminates the Agreement for any reason other than for an uncured, NFP breach, then the following provisions shall apply:
1. Network Partner will stop enrolling Clients as of the date notice is given to NFP.
  2. Network Partner shall make best efforts to give all Clients enrolled at the time Network Partner gives NFP a notice of termination the opportunity to complete the Program at Network Partner or transfer them to another NFP Implementing Entity. If there are no NFP programs in the area, Network Partner shall make

- best efforts to transfer Clients to another program that can meet their needs, if such programs exist.
3. If such programs exist, Network Partner shall demonstrate best efforts by communicating with at least three home visiting programs in its geographical area to ask if its Clients can be transferred (this includes nearby NFP programs or programs other than NFP). A report of that communication and the outcome shall be shared with the National Service Office ("NSO") no more than three days after communication has occurred.
  4. When a new program to which Clients can be transferred has been identified, Network Partner will work directly with that program's administrator to provide for the optimal transfer of Clients.
  5. When Clients are discharged, Network Partner shall provide Clients with contact information for the most up-to-date community resources available in its geographical area (electronically or on paper) at least five days before discharge (ideally during the last home visit). This will be done to provide the Client enough time to effectively respond to the situation.
  6. If Nurse Home Visitors will lose their jobs due to layoffs, the Network Partner shall reach out to the NSO for support in relocating these nurses to other NFP sites, which the NSO will do when such relocation is appropriate and possible.
- E. Default. A party shall be in default under this Agreement (i) if a party breaches a material provision of this Agreement, which breach is not cured to the non-breaching party's reasonable satisfaction within thirty (30) days of written notice given to the breaching party by the non-breaching party or (ii) upon the bankruptcy of a party.
- F. Remedies upon Default. The Parties shall use commercially reasonable efforts to take steps necessary to cause the breaching party to cure the applicable default. If such default is not cured to the reasonable satisfaction of the other party, and both Parties do not agree to terminate this Agreement, the Parties shall proceed in accordance with the dispute resolution process set forth in Section VI.
- G. Effect of Termination.
1. If the Agreement is terminated, Network Partner shall pay NFP for all work performed up to the date of termination. Payment shall be due within thirty (30) days of termination.
  2. If this Agreement is terminated through the dispute resolution process, the rights and obligations of each of the Parties upon termination shall be spelled out in the dispute resolution process.
  3. Upon termination of this Agreement, regardless of the timing, cause, or mechanism of such termination:
    - a) Network Partner will no longer have access to the NFP DCS;
    - b) Network Partner shall stop enrolling new Clients;
    - c) Network Partner shall work with the NFP Nurse Consultant to develop a transition plan, including, when applicable, a plan to provide continuity of care for current Clients;
    - d) NFP may retain a record of all data which has been collected by Network Partner while implementing the Program and may use that data and reports derived from it to evaluate the overall progress in national replication of the Program;
    - e) Network Partner and NFP will continue to comply with all relevant state, federal laws and all other provisions of this Agreement with respect to maintaining Client confidentiality;

- f) All materials in Network Partner's possession that utilize the Nurse-Family Partnership logo, tag line, or other protected marks must be returned to NFP or destroyed;
- g) All copies of Proprietary Property that have been provided to Network Partner by NFP or that have come into Network Partner's possession from other sources must be returned to NFP or destroyed; and
- h) Network Partner will cease to implement the Program and will cease to represent that it is implementing the Program.

#### VI. DISPUTE RESOLUTION.

If a dispute arises relating to this Agreement, the Parties shall attempt to resolve that dispute at the lowest possible level. If the dispute cannot be resolved at that level, the dispute shall be elevated to the Director, Program Development, of NFP and the Program Supervisor. If these persons cannot resolve the dispute, it shall be elevated to the next organizational level of NFP and Network Partner. If the dispute is not resolved through the foregoing process within a reasonable period of time, not to exceed any period of time that could reasonably be deemed to have a detrimental impact on the implementation of the Program by Network Partner, either party may initiate dispute resolution through any avenue permitted in law or in equity.

#### VII. LIABILITY.

- A. Each party hereto agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law.
- B. No liability hereunder shall result to a party by reason of delay in performance caused by force majeure, that is, circumstances beyond the reasonable control of the party, provided, however, that this provision shall not relieve such Party of its obligation to use reasonable care in preventing and/or mitigating the effects of the force majeure event.

#### VIII. ASSIGNMENT; SUBCONTRACTING.

Except as provided herein, this Agreement and the rights, obligations, interests and benefits hereunder shall not be assigned, transferred, pledged or hypothecated in any way to any third party, including financing institutions, without the prior written consent of NFP. Network Partner shall not respond to social impact bond or "pay for success" solicitations or enter into contracts or funding arrangements that link Program implementation performance to repayment of funding and name the Program as the targeted service without NFP's prior written consent. Network Partner shall not engage or utilize the services of any subcontractor to perform any of Network Partner's services hereunder without the prior written consent of NFP. If Network Partner engages a Subcontractor(s) to perform any of Network Partner's obligations hereunder, Network Partner shall require its Subcontractor(s) to agree in writing to the same restrictions and conditions as are imposed on Network Partner by this Agreement.

#### IX. MISCELLANEOUS PROVISIONS.

- A. Consents. Whenever a Party's consent or approval is required under this Agreement, such consent or approval shall be requested in writing and not be unreasonably withheld. If consent or approval is required by an employee of a Party, the Party who

employs such employee shall use at least commercially reasonable efforts to cause the employee to give or withhold such consent or approval in accordance with this paragraph. If no response is received by the requesting Party within ten business days after delivery of the applicable request, consent shall be deemed given.

- B. Notices. All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered by overnight courier or certified mail, postage prepaid, return receipt requested, or when sent by electronic mail, receipt confirmed, to the receiving party at the following addresses:

For NFP:

Original to:

Nurse-Family Partnership  
1900 Grant Street, Suite400  
Denver, CO 80203  
Attention: Chief Executive Officer  
Telephone: 303-327-4274  
Facsimile: 303-327-4260  
Email:  
Frank.Daidone@NurseFamilyPartnership.org

With a copy to:

Nurse-Family Partnership  
1900 Grant Street, Suite400  
Denver, CO 80203  
Attention: Chief Legal Officer  
Telephone: 303-327-4271  
Facsimile: 303-327-4260  
Email:  
Elizabeth.Jasper@NurseFamilyPartnership.org

For Network Partner:

Original to:

Attention: Jessie Thomson  
Agency: Whatcom County Health Dept  
509 Girard St.  
Bellingham, WA 98225  
Telephone: 360-927-1943  
Facsimile: 360-778-6001  
Email: jthomson@co.whatcom.wa.us

With a Copy to:

Attention: Judy Ziels  
Agency: Whatcom County Health Dept.  
1500 North State St.  
Bellingham, WA 98225  
Telephone: 360-778-6130  
Facsimile: 360-778-6104  
Email: jziels@co.whatcom.wa.us

or to such other address as such party may have given to the other by notice pursuant to this Paragraph. Notice shall be deemed given on the delivery or refusal date, as specified on the return receipt in the case of certified mail or on the tracking report in the case of overnight courier.

- C. Binding Upon Successors and Assigns. This Agreement, and all covenants, terms, provisions, and agreements contained herein, shall be binding upon and shall inure to the benefit of the Parties' respective successors and permitted assigns.
- D. Waivers. No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the party against whom the waiver is claimed; and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

- E. Responsibility for Debts and Obligations. Neither party shall be responsible either directly or indirectly for any of the debts or obligations of the other party except as provided under this Agreement.
- F. No Third-Party Beneficiary. This Agreement does not create any third-party beneficiary rights in any person or entity, including without limitation, financing institutions.
- G. Authority to Contract. The undersigned individuals represent that they are fully authorized to execute this Agreement on behalf of the respective Parties and make all representations, warranties, and covenants set forth herein. The Parties represent and warrant that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate actions of the Parties and do not violate any laws or any provisions of any agreement to which the Parties are bound.
- H. No Joint Venture. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership among the Parties. No party shall have the power to control the activities or operations of another party and their status is, and at all times shall continue to be, that of independent contractors with respect to each other. No party shall hold itself out as having authority or relationship in contravention of this Paragraph.
- I. Attorneys' Fees. If a party shall commence any action or proceeding against another party in order to enforce the provisions of this Agreement, or to recover damages as a result of the alleged breach of any of the provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable costs in connection therewith, including reasonable attorneys' fees.
- J. Further Assurances. The Parties shall cooperate fully with each other and execute such further instruments, documents, and agreements, and shall give such further written assurances, as may be reasonably requested by another party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intent and purposes of this Agreement.
- K. Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
- L. Applicable Law and Venue. This Agreement shall be governed by and construed according to the internal laws of the State of Colorado. By execution of this Agreement, each party submits and irrevocably waives any objection to in personam jurisdiction in the State of Colorado and the forum and convenience of the state and federal courts thereof.
- M. Survival. The terms and conditions of this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favor they operate.
- N. Counterparts and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. A facsimile or electronic signature to this

Agreement shall be deemed an original and binding upon the party against whom enforcement is sought.

- O. Audits. NFP is a vendor providing services that support Network Partner's implementation of the Nurse-Family Partnership® program. Network Partner pays NFP for these services at an agreed-upon rate, on a fee for service basis. NFP grants Network Partner a right to audit, with reasonable notice, those records that are directly related to determining that fees paid by Network Partner to NFP have been invoiced accurately under the terms of this agreement. If this paragraph conflicts with any other provisions in the Agreement, this paragraph will take precedence.
- P. Entire Agreement. This Agreement (together with Exhibits hereto, which are hereby incorporated by this reference) constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, among themselves or their agents and representatives relating to the subject hereof. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by all the Parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

**For NFP:**

Nurse-Family Partnership

By: Frank Daidone  
Signature

Frank Daidone,  
President & CEO  
(Printed Name & Title)

Date: 4/24/2021

**For Network Partner:**

Whatcom County

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

Erika Lautenbach  
Director  
(Printed Name & Title)

Date: \_\_\_\_\_

PROGRAM APPROVAL

Approved by email AN/JT  
Astrid Newell, Community Health Manager

08/25/2021  
Date

WHATCOM COUNTY

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

STATE OF WASHINGTON     )  
                                      )  
COUNTY OF WHATCOM     )

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

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

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

APPROVED AS TO FORM:

Approved by email RB/JT  
Royce Buckingham, Prosecuting Attorney

10/15/2021  
Date

## **EXHIBIT A. NURSE-FAMILY PARTNERSHIP MODEL ELEMENTS**

When the Program is implemented in accordance with these Model Elements, the Parties can reasonably have a high level of confidence that results will be comparable to those measured in research. Conversely, if implementation does not incorporate these Model Elements, results may be different from Research results.

- Element 1. Client participates voluntarily in the Nurse-Family Partnership Program.
- Element 2. Client is a first-time mother.
- Element 3. Client meets low- income criteria at intake.
- Element 4. Client is enrolled in the Program early in her pregnancy and receives her first home visit by no later than the end of the 28<sup>th</sup> week of pregnancy.
- Element 5. Client is visited one-to-one: one Nurse Home Visitor to one first-time mother/ family.
- Element 6. Client is visited in her home, as defined by the Client, or in a location of the Client's choice.
- Element 7. Client is visited throughout her pregnancy and the first two years of her child's life in accordance with the standard NFP visit schedule or an alternative visit schedule agreed upon between the Client and Nurse Home Visitor.
- Element 8. Nurse Home Visitors and Program Supervisors are registered professional nurses with a minimum of a Baccalaureate degree in nursing.
- Element 9. Nurse Home Visitors and Program Supervisors participate in and complete education required by NFP NSO. In addition, a minimum of one current Administrator participates in and completes the Administrator Education required by NFP.
- Element 10. Nurse Home Visitors use professional knowledge, nursing judgment, nursing skills, screening tools and assessments, frameworks, guidance and the NFP E-Guidelines™ to individualize the Program to the strengths and risks of each family and apportion time across defined Program domains.
- Element 11. Nurse Home Visitors and Program Supervisors apply nursing theory, nursing process and nursing standards of practice to their clinical practice and the theoretical framework that underpins the Program, emphasizing Self-Efficacy, Human Ecology and Attachment theories, through current clinical methods.
- Element 12. A full-time Nurse Home Visitor carries a caseload of 25 or more active Clients.
- Element 13. NFP Network Partners are required to employ a Program Supervisor at all times.
- Element 14. Program Supervisors provide Nurse Home Visitors clinical supervision with reflection, demonstrate integration of the theories, and facilitate professional development essential to the Nurse Home Visitor role through specific supervisory activities including 1:1 clinical supervision, case conferences, team meetings and field supervision.

- Element 15. Nurse Home Visitors and Program Supervisors collect data as specified by NFP and ensure that it is accurately entered into the NFP Data Collection System (“DCS”) in a timely manner.
- Element 16. Nurse Home Visitors and Program Supervisors use data and NFP reports to assess and guide Program Implementation, enhance Program quality and demonstrate Program Fidelity and inform clinical practice and supervision.
- Element 17. Network Partner is located in and operated by an organization known in the community for being a successful provider of prevention services to low-income families.
- Element 18. Network Partner convenes a long-term Community Advisory Board that reflects the community composition and meets at least quarterly to implement a community support system for the program and to promote program quality and sustainability.
- Element 19. Adequate organizational support and structure shall be in place to support Nurse Home Visitors and Program Supervisors to implement the Program with Fidelity to the Model.

## **EXHIBIT B. NURSE-FAMILY PARTNERSHIP SUPPORT FOR AN NETWORK PARTNER**

To help Network Partner implement the Program with Fidelity to the Model, NFP provides the following support to Network Partner:

- I. NFP provides support to help Network Partner prepare to implement the Program including:
  - A. Materials to help Network Partner:
    1. Select and set up Network Partner's work space;
    2. Establish telecommunications and computer capabilities;
    3. Recruit and hire Program Supervisors, Nurse Home Visitors, and administrative support staff;
    4. Establish a network of sources who may refer low-income, first-time mothers to Network Partner;
    5. Facilitate enrollment of Clients;
    6. Establish a network of social services which can provide support to Network Partner's Clients;
    7. Work with media;
    8. Inform the community and build support for Network Partner, the Program, and Program Benefits;
    9. Establish strong, stable, and sustainable funding for Network Partner operations.
  - B. An NFP DCS users' manual, which provides instructions describing what data must be collected for NFP DCS by Network Partner's staff, how that data must be entered into NFP DCS, and how reports can be obtained. NFP may modify the NFP DCS users' manual from time to time and will provide Network Partner with updated versions on a timely basis.
  - C. Access to an Internet-based discussion forum with other entities that are implementing the Program.
  - D. A visit to Network Partner by a member of NFP staff to offer direct consultation on Program implementation.
- II. NFP provides ongoing support to Network Partner via telephone and email during Program implementation and operation, including:
  - A. Consultation with respect to topics such as, developing community support, keeping interested constituencies informed about progress and results, planning and implementing expansion, and sustaining and increasing funding;
  - B. Model implementation consultation for Program Supervisors and Nurse Home Visitors;
  - C. Consultation regarding data collection, entry, management, and interpretation.
  - D. On-site consultation as is mutually deemed necessary and appropriate.
- III. NFP provides a description of education programs, both required and optional, and a schedule of upcoming education events and locations. NFP may modify the specific names, descriptions, and content of education programs, as well as their schedule and locations from time to time and will inform Network Partner of such modifications on a timely basis.
- IV. NFP provides education to Program Supervisors and Nurse Home Visitors at dates and locations to be determined by NFP. Education will cover the following topics:
  - A. The Program, Program Benefits, and Model Elements;
  - B. Use of the NFP DCS, including data collection, entry, management, and interpretation;

- C. Implementation of the Program using the NFP E-Guidelines™ and associated tools and materials;
  - D. Knowledge and skills needed by the NFP Program Supervisor for proper Program delivery; and
  - E. Other aspects of the Program that NFP believes are warranted for successful Program implementation by the staff at Network Partner.
- V. NFP provides E-Guidelines™ and other materials to help Program Supervisors and Nurse Home Visitors implement the Program with Fidelity to the Model Elements. NFP may modify the E-Guidelines from time to time and will provide Network Partner with updated versions on a timely basis.
- VI. NFP provides support for Network Partner's use of the NFP DCS, including:
- A. Monitoring the Network Partner's data collection and entry activity and quality and providing feedback to Network Partner as appropriate;
  - B. Maintaining and supporting NFP DCS software;
  - C. Upgrading NFP DCS software when deemed necessary by NFP; and
  - D. Technical assistance via telephone or e-mail to support Network Partner's use of the NFP DCS.
- VII. NFP provides implementation reports and evaluation reports at such times as NFP deems commercially reasonable and necessary to meet the needs of Network Partner and entities to which Network Partner may be obligated to provide such information. Subject to applicable federal and state laws, if any, such reports cover:
- A. Network Partner activity. Reports designed primarily for Program Supervisors and Nurse Home Visitors to help them manage Nurse Home Visitor activity.
  - B. Quality improvement. Reports aimed to help Network Partner improve Fidelity to the Model including reports designed (i) to assist Program Supervisors and Nurse Home Visitors identify and prioritize actions for improving Program outcomes, and (ii) to help NFP staff assess how Network Partners are performing with respect to Fidelity to the Model.
  - C. Program outcomes. Reports designed to help Program Supervisors and funding decision makers assess the effectiveness of the Program as applied to Network Partner's particular circumstances.
  - D. These reports are available on a pre-defined schedule or from the NFP DCS Website on demand. NFP may modify the Program Reports from time to time.
- VIII. NFP will provide art work and color and usage guidelines to help Network Partner develop and produce communications materials that properly use the NFP trademark, logo, tag lines, and other copyrighted or otherwise protected language, images, and materials controlled by NFP.
- IX. NFP will periodically assess the extent to which Network Partner is implementing the Program with Fidelity to the Model. When such assessment indicates opportunities for Network Partner to improve its results by strengthening Fidelity to the Model, NFP staff will meet with Network Partner's supervisors and staff and mutually develop a Collaborative Success Plan ("CSP"). From time to time, NFP may engage either internal or external auditors to evaluate the performance of the Network Partner. Network Partner will cooperate fully with any quality audit that is undertaken by or on behalf of NFP.

- X. Collaborative Success Plan (“CSP”). The NFP Program is a model where collaboration and change occur within the context of a relationship with shared goals. The CSP was developed to facilitate shared agreements and planning between NFP and Implementing Entities throughout the life span of Program implementation and is updated at least annually. The CSP operates as follows:
- A. The goal of the CSP is to support alignment with the Model Elements (Fidelity to the Model) in the areas of program growth, operational efficiency, outcomes, and sustainability. Like the nursing process, the CSP provides opportunities to support Program implementation throughout the life cycle of an Implementing Entity. The CSP is periodically assessed and updated as circumstances require to identify opportunities for growth. The CSP provides a framework for action to support those opportunities. The Implementing Entity and NFP Nurse Consultants collaborate to create a CSP with action items that include both NFP responsibilities and the Implementing Entity’s responsibilities.
  - B. A CSP serves as a tool for both the Implementing Entity and NFP to monitor progress towards mutually agreed upon areas for growth and to ensure that NFP is providing adequate support to enable the Implementing Entity to serve families in the community effectively. Both Parties will have access to the document which will include mutually agreed upon goals, contributing factors, and action items for both NFP and the Implementing Entity. Progress on goals will be assessed regularly during consultation calls.
  - C. After a CSP is finalized, the NFP will provide the Implementing Entity with full-time access to it. The CSP includes documentation of shared goals and progress on action items. CSPs are reviewed quarterly at a minimum, and more often as needed.

## EXHIBIT C. FEES FOR NURSE-FAMILY PARTNERSHIP SERVICES

**NFP FEES FOR THE FIRST TWO YEARS OF SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE AS FOLLOWS, SUBJECT TO CHANGE IN ACCORDANCE WITH SECTION IV:**

Section 1: Education, Replacement, and Expansion Fees			
Nurse Home Visitor Education Fee (Invoiced upon completion of the face-to-face session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$5,100.00	Per NHV or Program Supervisor Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$5,254.00	
Program Supervisor Education Fee (Invoiced upon completion of the face-to-face session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$922.00	Per Program Supervisor Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$950.00	
Program Supervisor Unit 2 Education Fee (Invoiced upon completion of the face-to-face session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$800.00	Per Program Supervisor Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$825.00	
Administrator Standard Education Fee (Invoiced upon completion of the face-to-face session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$603.00	Per Administrator Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$621.00	
Administrator Optional Session Education Fee (Invoiced upon completion of the face-to-face session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$282.00	Per Administrator Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$290.00	
NHV Educational Materials Fee (Invoiced upon completion of the face-to-face NHV education session)			
Price Effective Date*	End Date	Unit Price	Unit of Measure
4/1/2021	12/31/2021	\$648.00	Per NHV or Program Supervisor Attendee (*Beginning 1/1/2022, price is based on the <b>calendar year</b> )
1/1/2022	12/31/2022	\$667.00	
Program Supervisor Replacement Fee (Invoiced at the time of occurrence)			
Price Effective Date	End Date	Unit Price	Unit of Measure
4/1/2021	3/31/2022	\$3,462.00	One time per Replacement of Program Supervisor per Occurrence (Price is set on contract anniversary date)
4/1/2022	3/31/2023	\$3,566.00	
Team Addition Expansion Fee (Invoiced at the time of occurrence)			
Price Effective Date	End Date	Unit Price	Unit of Measure
4/1/2021	03/31/2022	\$19,781.00	One time per expansion per Occurrence. (Price is set on contract anniversary date)
4/1/2022	03/31/2023	\$20,374.00	
Regional Expansion Fee (Invoiced at the time of occurrence)			
Price Effective Date	End Date	Unit Price	Unit of Measure
4/1/2021	03/31/2022	\$24,726.00	One time per expansion per Occurrence. (Price is set on contract anniversary date)
4/1/2022	03/31/2023	\$25,468.00	

## Section II: Annual Fees

### NFP Network Partner Annual Program Support Fee (For the First Team at a Location)

(Invoiced annually on the Price Effective Date)

Price Effective Date	End Date	Unit Price	Unit of Measure
			Annual per first team per year (The fee total is based on the number of Nurse Home Visitors per team)
Two NHV Team 4/1/2021	03/31/2022	\$20,304.00	(Price is set on contract anniversary date)
Two NHV Team 4/1/2022	03/31/2023	\$20,568.00	
Three NHV Team 4/1/2021	03/31/2022	\$21,024.00	
Three NHV Team 4/1/2022	03/31/2023	\$21,420.00	
Four NHV Team 4/1/2021	03/31/2022	\$21,744.00	
Four NHV Team 4/1/2022	03/31/2023	\$22,260.00	
Five NHV Team 4/1/2021	03/31/2022	\$22,464.00	
Five NHV Team 4/1/2022	03/31/2023	\$23,112.00	
Six NHV Team 4/1/2021	03/31/2022	\$23,184.00	
Six NHV Team 4/1/2022	03/31/2023	\$23,964.00	
Seven NHV Team 4/1/2021	03/31/2022	\$23,904.00	
Seven NHV Team 4/1/2022	03/31/2023	\$24,816.00	
Eight NHV Team 4/1/2021	03/31/2022	\$24,624.00	
Eight NHV Team 4/1/2022	03/31/2023	\$25,668.00	

### NFP Network Partner Annual Program Support Fee (For the Second and Subsequent Teams at a Location)

(Invoiced annually on the Price Effective Date)

Price Effective Date	End Date	Unit Price	Unit of Measure
			Annual per second or subsequent team per year (The fee total is based on the number of Nurse Home Visitors per team)
Two NHV Team 4/1/2021	03/31/2022	\$18,456.00	(Price is set on contract anniversary date)
Two NHV Team 4/1/2022	03/31/2023	\$18,720.00	
Three NHV Team 4/1/2021	03/31/2022	\$19,176.00	
Three NHV Team 4/1/2022	03/31/2023	\$19,572.00	
Four NHV Team 4/1/2021	03/31/2022	\$19,896.00	
Four NHV Team 4/1/2022	03/31/2023	\$20,424.00	
Five NHV Team 4/1/2021	03/31/2022	\$20,616.00	
Five NHV Team 4/1/2022	03/31/2023	\$21,264.00	
Six NHV Team 4/1/2021	03/31/2022	\$21,336.00	
Six NHV Team 4/1/2022	03/31/2023	\$22,116.00	
Seven NHV Team 4/1/2021	03/31/2022	\$22,056.00	
Seven NHV Team 4/1/2022	03/31/2023	\$22,968.00	
Eight NHV Team 4/1/2021	03/31/2022	\$22,776.00	
Eight NHV Team 4/1/2022	03/31/2023	\$23,820.00	

## **EXHIBIT D. HIPAA BUSINESS ASSOCIATE ADDENDUM**

- I. NFP is considered a Business Associate of Network Partner, as NFP either: (A) performs certain functions on behalf of or for Network Partner that may involve the use or disclosure of protected individually identifiable health information by Network Partner to NFP, or the creation or receipt of PHI by NFP on behalf of Network Partner; or (B) provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, financial or social services for Network Partner involving the disclosure of PHI.
- II. Network Partner and NFP mutually agree to incorporate the terms of this Exhibit into the Agreement to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and HIPAA's implementing regulations, Title 45, Parts 160 and 164 of the Code of Federal Regulations ("Security and Privacy Rule"), as amended by HITECH. If any conflict exists between the terms of the Agreement and this Exhibit, the terms of this Exhibit shall govern.
- III. This Exhibit is specific to those services and programs included in the Agreement where it has been concluded that NFP is performing specific functions on behalf of Network Partner that have been determined to be covered under the HIPAA Security and Privacy Rule. NFP's activities within the Agreement may include, but are not limited to the following: (i) data analysis, processing or administration, (ii) quality assurance, (iii), billing, and (iv) other management or administrative functions where NFP may not otherwise be subject to the HIPAA Security and Privacy Rule, including also health services functions.
- IV. Definitions:
  - A. Protected Health Information (PHI) means any information, whether oral or recorded in any form or medium, including Electronic Health Records (EHR), that: (i) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Security and Privacy Rule.
  - B. Individual means the person who is the subject of PHI, and shall include a person who qualifies under the Security and Privacy Rule as a personal representative of the Individual.
- V. Capitalized terms used in this Exhibit, but not otherwise defined, shall have the same meaning as those terms in the Security and Privacy Rule, as amended from time to time.
- VI. Prohibition on Unauthorized Use or Disclosure of PHI: NFP shall not use or disclose any PHI received from or on behalf of Network Partner except as permitted by the Security or Privacy Rule, or as required by law, or as otherwise authorized in writing by Network Partner.
- VII. Use and Disclosure of Protected Health Information: Except as described in Section IV, NFP may use or disclose PHI only for the following purpose(s):
  - A. For the proper management and administration of the functions and activities related to the provision of healthcare services specified within the Agreement.
  - B. For meeting its obligations as set forth in any agreements between the parties evidencing their business relationship.

- C. As would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Network Partner or as required by applicable law, rule or regulation.
- D. For Data Aggregation purposes for the Health Care Operations of Network Partner.
- E. For use in NFP's operations as described in the Agreement.

VIII. Disclosures of PHI shall, to the extent practicable, be limited to the applicable limited data set and to the minimum necessary information to accomplish the intended purpose of the use, disclosure or request unless otherwise determined by guidance of the Secretary of the U.S. Department of Health and Human Services ("Secretary").

IX. Use of PHI for Certain of NFP's Operations: NFP may use and/or disclose PHI it creates for, or receives from, Network Partner to the extent necessary for NFP's proper management and administration, or to carry out NFP's legal responsibilities, only if:

- A. The disclosure is required by law.
- B. NFP obtains reasonable assurances, evidenced by written contract, from any person or organization to which NFP shall disclose such PHI that such person or organization shall:
  1. Hold such PHI in confidence and use or further disclose it only for the purpose for which NFP disclosed it to the person or organization, or as required by law; and
  2. Notify NFP, who shall in turn promptly notify Network Partner, of any instance which the person or organization becomes aware of in which the confidentiality of such PHI was breached.

X. Safeguarding of PHI: NFP shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media, received from or created or received by Network Partner on behalf of, Network Partner. NFP shall document and keep these security measures current, consistent with HIPAA Security regulations. NFP shall cooperate and respond in good faith to any reasonable request from Network Partner to discuss and review NFP's safeguards.

XI. Subcontractors and Agents: If NFP provides any PHI which was received from, or created for Network Partner, to a subcontractor or agent, then NFP shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on NFP by this Exhibit and by sections 164.502 and 164.504(e) of Title 45 of the Code of Federal Regulation, as amended from time to time. NFP shall keep Network Partner informed of the identities of all subcontractors having access to PHI created, received, maintained or transmitted on behalf of Network Partner.

XII. Access to PHI: At the direction of Network Partner, NFP agrees to provide access to any PHI held by NFP which Network Partner has determined to be part of Network Partner's Designated Record Set, in the time and manner designated by Network Partner. This access will be provided to Network Partner or, as directed by Network Partner, to an Individual, in order to meet the requirements under the Security and Privacy Rule.

XIII. Reporting of Unauthorized Disclosures or Misuse of PHI: NFP shall report to Network Partner any unauthorized acquisition, access, use or disclosure of PHI. NFP shall make the report to Network Partner within ten (10) business days after NFP confirms the existence of such use or disclosure. NFP's report shall identify: (i) each individual protected by this Exhibit whose PHI has been, or is reasonably believed by NFP to have been, accessed, acquired or disclosed, (ii) the nature of the unauthorized use or disclosure, (iii) the PHI used or disclosed, (iv) who made the unauthorized use or received the unauthorized disclosure,

(v) what NFP has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (vi) what corrective action NFP has taken or shall take to prevent future similar unauthorized use or disclosure. NFP shall provide such other information, including a written report, as reasonably requested by Network Partner.

- XIV. Mitigating Effect of Unauthorized Disclosure or Misuse of PHI: NFP agrees to mitigate, to the extent practicable, any harmful effect that is known to NFP of a misuse or unauthorized disclosure of PHI by NFP in violation of the requirements of this Exhibit.
- XV. Notification Requirements In the event of Unauthorized Disclosure or Misuse of PHI. In the event of a Breach, NFP agrees to take the following steps within sixty (60) days:
- A. Provide written notice by first-class mail to the Individual or next of kin if the Individual is deceased, at the last known address of the Individual or next of kin, or if specified as a preference by the Individual, by electronic mail.
  - B. If contact information is insufficient to provide notice to an individual, provide a substitute form of notice; and, where there are ten (10) or more Individuals with insufficient contact information, make a conspicuous posting as required by the Secretary as provided on the Secretary's official web site.
  - C. If the Breach involves the PHI of more than five-hundred (500) Individual residents of the state, notify prominent media outlets.
  - D. Include in notice to individuals: (i) a brief description of what happened; (ii) a description of the type of information involved; (iii) steps Individuals should take to protect themselves from potential harm resulting from the Breach; a description of what is being done to investigate the Breach, mitigate losses and protect against further breaches; and (iv) contact procedures for Individuals to obtain further information.
  - E. Comply with any other notice requirements of the Security and Privacy Rule, the ARRA of 2009 or guidance statements of the Secretary, as amended from time to time.
- XVI. Log of Unauthorized Disclosure or Misuse of PHI: NFP shall maintain a log of any Breach covered by this Exhibit and shall annually submit such log to Network Partner. NFP shall provide immediate notice to Network Partner of any breach of the PHI of five-hundred (500) or more individuals.
- XVII. Accounting to Network Partners and to Government Agencies: NFP shall make its internal practices, books, and records relating to the use and disclosure of PHI available to Network Partner, or at the request of Network Partner, to the Secretary or his/her designee, in a time and manner designated by Network Partner or the Secretary or his/her designee, for the purpose of determining NFP's compliance with the Security and Privacy Rule. NFP shall promptly notify Network Partner of communications with the Secretary regarding PHI provided by or created by Network Partner and shall provide Network Partner with copies of any information NFP has made available to the Secretary under this provision.
- XVIII. Prohibition on Sale of Electronic Health Records or Protected Health Information: NFP shall not receive remuneration in exchange for any EHR or PHI of an Individual received from or on behalf of Network Partner.
- XIX. Term and Termination: In addition to the rights of the parties established by the Agreement, if Network Partner reasonably determines in good faith that NFP has materially breached any of its obligations under this Addendum, Network Partner, in its sole discretion, shall have the right to:
- A. Exercise any of its rights to reports, access and inspection under this Exhibit; and/or

- B. Require NFP to submit to a plan of monitoring and reporting, as Network Partner may determine necessary to maintain compliance with this Exhibit, and/or
- C. Provide NFP with a thirty (30)-day period to cure the breach; or
- D. Terminate the Agreement immediately.

XX. Before exercising any of these options, Network Partner shall provide written notice to NFP describing the violation and the action it intends to take.

XXI. Return or Destruction of PHI: The Parties agree that the return or destruction of PHI or Health Information is not feasible, due to data integrity and ongoing Program evaluation. Therefore, NFP shall extend the protections of this Exhibit to PHI and Health Information received from or created on behalf of Network Partner, and limit further uses and disclosures of such PHI, for so long as NFP maintains the PHI.

XXII. Miscellaneous:

- A. Automatic Amendment: Upon the effective date of any amendment to the regulations promulgated by the Secretary with regard to PHI, this Exhibit shall automatically amend so that the obligations imposed on NFP remain in compliance with such regulations.
- B. Interpretation: Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Network Partner to comply with the Security and Privacy Rule.

XXIII. The Parties acknowledge that, while providing the services to Network Partner under the terms of the Agreement, NFP will be enabling the Prevention Research Center for Family and Child Health ("PRC"), an organization which is part of the University of Colorado at Denver and Health Sciences Center, to access data that may be PHI for the purposes of research, analysis, and reporting. NFP will ensure that PRC and its employees and NFP's agents, employees, subcontractors or others to whom it provides PHI received by or created by NFP on behalf of Network Partner agree in writing to the same restrictions and conditions that apply to NFP with respect to such information. NFP also agrees to take all reasonable steps to ensure that its employees', agents', or subcontractors' actions or omissions do not cause NFP to breach the terms of this Addendum. NFP will use all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement and Exhibit.

## **EXHIBIT E. NETWORK PARTNER RESPONSIBILITIES**

To ensure that the Nurse-Family Partnership Program is implemented with Fidelity to the Model, Network Partner will undertake the following actions during initial implementation and ongoing operation:

- I. Network Partner shall:
  - A. Identify, from its top tier leadership, an Administrator to support Program implementation within the community;
  - B. Set up and maintain an appropriate work space for staff who are to implement the Program;
  - C. Establish and maintain appropriate telecommunications and computer capabilities for staff;
  - D. Recruit, hire, and retain Program Supervisors, Nurse Home Visitors, and administrative support staff;
  - E. Establish, maintain, keep current, and improve its network of referral sources who will refer low-income, first-time mothers to Network Partner;
  - F. Enroll Clients that meet the criteria specified in the Model Elements.
  - G. Establish, maintain, keep current and improve its network of social services and community resources that can provide support to Network Partner's Clients;
  - H. Work with media to ensure timely and accurate communication to the public about the Program and its implementation by Network Partner;
  - I. Inform the community and build support for Network Partner, the Program, and Program Benefits, including educating local, state and/or federal policymakers;
  - J. Establish and maintain strong, stable, and sustainable funding for Network Partner operations and seek new funding streams to sustain and expand the Program.
  - K. Utilize NFP's Internet-based discussion forum to share learning with other entities that are implementing the Program.
- II. Network Partner will keep NFP informed of implementation issues that may impact Program sustainability, ability to reach Program capacity, and Fidelity to the Model.
- III. Network Partner will ensure that all Administrators, Program Supervisors, Nurse Home Visitors, and administrative staff attend, participate in, and/or complete education programs required by NFP, do so on a timely basis, and, upon completion, demonstrate a level of competence deemed satisfactory by NFP in its reasonable discretion.
- IV. Network Partner will ensure that no Nurse Home Visitor is assigned a case load or makes a Client visit (except in the company of an NFP-educated Nurse Home Visitor) until after she/he has completed Unit II on the Program, Program Benefits, Model Elements, use of the NFP DCS, and implementation of the Program for mothers who are pregnant.
- V. Network Partner will implement the Program in accordance with the E-Guidelines™ including:
  - A. Ensure enrollment of 25 first-time mothers per full-time Nurse Home Visitor within nine months of beginning implementation and make best efforts to maintain that level of enrollment on an ongoing basis;
  - B. Ensure that each full-time Nurse Home Visitor carries a caseload of at least 25 active families; and

- C. Ensure that the essential Program content as described in the E-Guidelines™ is addressed with Clients by Nurse Home Visitors.
- VI. Network Partner will ensure the availability of appropriate, fully functioning computer systems and software at Network Partner's location for use of the NFP DCS and to communicate with NFP by email.
- VII. Network Partner will ensure that Program Supervisors and Nurse Home Visitors (a) collect required data on Client visits and enter it into the NFP DCS completely and accurately within five (5) business days of visiting the Client, and (b) enter any other data for NFP DCS completely and accurately on or before the last day of each calendar month, taking all appropriate steps to maintain Client confidentiality and obtain any necessary written permissions or agreements for data analysis or disclosure of protected health information, in accordance with HIPAA (Health Insurance Portability and Accountability Act of 1996) regulations, including, but not limited to, authorizations, data use agreements, and business associate agreements, as necessary. Failure of Network Partner to comply with any applicable provision of HIPAA will constitute a breach of this Agreement.
- VIII. Network Partner will ensure that Program Supervisors:
  - A. Aim to develop a supportive relationship with the Nurse Home Visitors she/he supervises;
  - B. Meet one-on-one with each Nurse Home Visitor at least weekly to provide clinical supervision using reflection, preferably in person but by telephone where travel constraints limit nurse or Program Supervisor mobility; and
  - C. Run activity reports and quality improvement reports from the NFP DCS on a timely basis (typically monthly); use such reports to assess areas where systems, organizational, or operational changes are needed to enhance the overall quality of program operations; and develop and implement action plans based on these assessments, team meetings and case conferences, in accordance with the Model Elements.
- IX. Network Partner will ensure that Administrators:
  - A. Support the Team as appropriate;
  - B. Review annual outcome and fidelity measures to assess the status of Program implementation;
  - C. Review capacity and sustainability regularly;
  - D. Take advantage of NFP's ongoing distance learning opportunities related to Administrator education, including online learning and, when practical and appropriate, travel to the NSO for additional training;
  - E. Make best efforts to support the Community Advisory Board ("CAB"), and
  - F. Maintain an ongoing commitment to the professional development and education of Nurse Home Visitors and provide opportunities for additional training, when applicable.
- X. Network Partner will develop a Community Advisory Board with diverse representation (for example, health, mental health, education, criminal justice, youth, business, social services, faith-based leaders, other prominent community organization leaders) to ensure broad-based community support for Network Partner's implementation of the Program.

- XI. NFP will periodically assess the extent to which Network Partner is implementing the Program with Fidelity to the Model. When such assessment indicates opportunities for Network Partner to improve its results by strengthening Fidelity to the Model, NFP staff will meet with Network Partner supervision and mutually develop a plan to do so.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-598

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<b>File ID:</b>	AB2021-598	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/13/2021	<b>Entered by:</b>	RMcconne@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Request for Motion		
<b>Assigned to:</b>	Council Public Works & Health Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

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

Discussion and request for motion regarding community requested revision to the Birch Bay Golf Cart Zone boundary

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

See attachment

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Traffic Study



## MEMORANDUM

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

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

**From:** James P. Karcher, P.E., County Engineer *JPK*  
Doug Ranney, P.E., Engineering Manager *DWR*

**Date:** October 26, 2021

**Re:** Community Requested Revision to the Birch Bay Golf Cart Zone Boundary

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Public Works was recently contacted by the Birch Bay Chamber of Commerce with a request for modifications to the Birch Bay Golf Cart Zone ("Zone"). Public Works often assists the Birch Bay community with facilitation of community driven solutions and brings this request to the Committee for consideration.

The current request from the Birch Bay Chamber of Commerce consists of extending the limits of the Zone on Alderson Road from Parkland Drive to Gemini Street.

Doralee Booth of the Birch Bay Chamber of Commerce requests the opportunity to address Council during this discussion session.

The Zone was established on May 22, 2018, with a sunset date of October 31, 2019, and then reauthorized in perpetuity on October 22, 2019. No revisions were made to the extents of the Zone at the time of reauthorization.

The Committee may make a motion for full Council to direct Public Works to create an ordinance to extend the Zone or to leave the Zone as currently established.

Public Works requests direction from the Council on how to proceed with this matter.



## Traffic Study for Alderson Road from mile post 0.55, Gemini St (private road) to mile post 0.89, Blaine Rd SR-548

September 17<sup>th</sup>, 2021

The primary purpose of this traffic study is to provide information to the Whatcom County Council in order for them to determine if the speed limit should be lowered to 25 MPH and the roadway segment should be added to the Birch Bay Golf Cart Zone.

### Roadway Information

Alderson Rd is an Urban Minor Collector from mile post 0.04 (Birch Bay Drive) to mile post 0.89 (Blaine Rd SR-548) it functions to move traffic into and out of the Birch Bay area in as quick and safe a manner as possible. The roadway consists of two – 11 foot BST (chipseal) lanes and 4 foot ACP (asphalt) shoulders.

### Traffic Count Information

Two traffic counts were performed from June 19<sup>th</sup> to 28<sup>th</sup>, 2021 and a third from June 7<sup>th</sup> to 17<sup>th</sup>, 2019 was reviewed. The traffic counts consist of volume (Average Daily Traffic – ADT), speed and truck volume percentage. The locations of the counts were at mile post 0.49, 0.06 miles west of Gemini St; at mile post 0.29, east of Leaside Dr; and at mile post 0.66, 0.23 miles west of Blaine Rd SR-548. The results are as follows:

#### Volume:

2021 Alderson Rd – W of Gemini St	2327 ADT
2021 Alderson Rd – W of Blaine Rd (SR-548)	2369 ADT
2019 Alderson Rd – E of Leaside Dr	1999 ADT

#### Speed:

The 85<sup>th</sup> percentile speed is the speed at which 85 percent of traffic is travelling at or below and is often use by traffic engineers, along with other factors, to set speed limits.

2021 Alderson Rd – W of Gemini St	85 <sup>th</sup> percentile 39.6 mph (Speed Limit 35 mph)
2021 Alderson Rd – W of Blaine Rd (SR-548)	85 <sup>th</sup> percentile 44.4 mph (Speed Limit 35 mph)
2019 Alderson Rd – E of Leaside Dr	85 <sup>th</sup> percentile 36.5 mph (Speed Limit 25 mph)

#### Percentage of Truck Traffic:

2021 Alderson Rd – W of Gemini St	6.9%
2021 Alderson Rd – W of Blaine Rd (SR-548)	7.3%
2019 Alderson Rd – E of Leaside Dr	6.1%

### Collisions

A review of collisions received from the Washington State Patrol showed there have been 2 collisions on Alderson Rd from mile post 0.04 (Birch Bay Drive) to mile post 0.89 (Blaine Rd SR-548) from 01/01/2016 to 12/31/2020. Neither of the collisions involved a golf cart.

07/28/2016 MP 0.87, two vehicle non-injury collision: from opposite directions, both going straight, sideswipe. Contributing circumstances were listed as inattention and unknown driver distraction. Mini-van crossed the centerline and collided with a dump truck, neither driver was cited.

03/04/2018 MP 0.36, single vehicle minor injury collision: vehicle overturned. Contributing circumstances were listed as none. Motorcycle rider thought another driver was going to pull out in front of him from Boundary Ln and lost control of his motorcycle while trying to swerve to avoid a collision. Driver had scrapes on his hands and knee from putting the motorcycle down and sliding. Driver was not cited.

## **Signs**

The following speed limit signs are posted:

25 MPH for eastbound traffic just west of Leaside Dr at MP 0.163

25 MPH for westbound traffic just east of Parkland Dr at MP 0.455

35 MPH for eastbound traffic just east of Parkland Dr at MP 0.487

35 MPH Unless Posted Otherwise for westbound traffic just west of Blaine Rd SR-548 at MP 0.854

The following Golf Cart Zone signs are posted:

Leaving Golf Cart Zone for eastbound traffic at MP 0.487

Entering Golf Cart Zone for westbound traffic at MP 0.488

## **Conclusion**

Alderson Rd is functioning in a manner that we would expect for an urban minor collector with moderate traffic volumes. Speeds however are higher than what would be expected in both the 25 mph and 35 mph zones. This indicates that the change in speed limit needed to establish a golf cart zone may not have the desired effect of lowering vehicle speeds and could result in an increase in speed differential collisions. Gemini St, which is a private road, is the access to Bay Horizon Park, which may be a draw for visitors on golf carts; however there are only 6 properties located easterly of there and they are unlikely to be a source of, or attraction to, visitors. Additionally, the golf cart zone currently ends at a public road, Parkland Dr, and no portion of the current golf cart zone extends over private roads.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-590

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<b>File ID:</b>	AB2021-590	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	10/04/2021	<b>Entered by:</b>	JLassite@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council Planning and Development Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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.

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## HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council Planning and Development Committee

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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 Dana Brown Davis, Clerk of the Council  
45

46 \_\_\_\_\_  
47 Barry Buchanan, Council Chair  
48

49       **APPROVED AS TO FORM:**

50       **WHATCOM COUNTY EXECUTIVE**  
51       **WHATCOM COUNTY, WASHINGTON**  
52

53 \_\_\_\_\_  
54 Civil Deputy Prosecutor  
55

56 \_\_\_\_\_  
57 Satpal Sidhu, County Executive  
58

59 (    ) Approved        (    ) Denied

60 Date Signed: \_\_\_\_\_  
61



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-605

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<b>File ID:</b>	AB2021-605	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/15/2021	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Planning and Development Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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Primary Contact Email: [cstrong@co.whatcom.wa.us](mailto:cstrong@co.whatcom.wa.us) <<mailto:cstrong@co.whatcom.wa.us>>

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

Discussion on proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options

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

Discussion of proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options by allowing and regulating tiny homes and allowing duplexes in planned unit developments.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Report, Proposed ordinance, Exhibit A

**Whatcom County  
Planning & Development Services  
Staff Report**

**Affordable Housing Options**

## **I. File Information**

**File #:** PLN2021-00012

**File Name:** Affordable Housing Options

**Applicant:** Whatcom County Planning and Development Services (PDS)

**Project Summary:** Proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options by allowing and regulating tiny homes and allowing duplexes in planned unit developments.

**Location:** Countywide.

**Attachments**

- Draft Ordinance
- Exhibit A – Proposed Amendments

## **II. Background**

The Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes within mobile home or RV parks or on individual lots, as newly authorized under amendments to RCW 58.17.040 via ESSB 5383. Staff is also proposing amendments to the Planned Unit Development (PUD) code to allow and encourage duplexes in urban growth areas. Both are intended to provide additional affordable housing options for Whatcom County citizens.

### **Tiny Homes**

#### **What are Tiny Homes?**

To decipher how best to develop the regulatory structure to allow tiny homes, staff first identified the key characteristics of the various types of tiny homes to compare with our existing types of analogous residential units. Broadly, but in more detail in Table 1, these characteristics have to do with what type of state or federal license or certification they can obtain, whether or not they're self-contained<sup>1</sup>, and whether they have chassis and axles/wheels, all of which have to do with whether they are intended or can be used for long-term (residential) or short-term (recreational) use. There are other differences, like how much insulation they have or whether they have basic sanitary facilities such as toilets, showers, and sinks, but these are built into the certification/licensing standards and the characteristics we've used seem to suffice for classification.

<sup>1</sup> Meaning do they have tanks to hold water and sewage and have batteries for power, or do they need to be connected to utilities to operate?

Based on this analysis, we have identified four types of tiny homes, each corresponding to one of our existing unit types. The two that are intended for long-term residential use are:

- *Site-Built Tiny Homes* are built on-site, are not self-contained, are intended for long-term use, and meet the International Residential Code (IRC) standards. They are analogous to standard site-built homes, except that they're smaller (< 400 sq. ft.).
- *Manufactured Tiny Homes* are built off-site (generally at a manufacturing plant) with a chassis, axles, and wheels and transported to their final location (though the wheels may be removed) where the unit is placed on a permanent foundation. They are not self-contained, are intended for long-term use, and would have to meet the IRC standards *or* be HUD certified *and* be L&I certified as a permanent dwelling unit. They are analogous to standard mobile (or manufactured) homes, except that they're smaller.

The other types of tiny homes that are getting a lot of interest are Tiny Homes on Wheels (or THOWs, and yes, a real acronym). These tend to be homemade but, because of their construction standards, they are only intended and can only be certified for short-term recreational use or occupancy. But even among them, based on key characteristics, there are two different types. We're designating them:

- *Type 1 Tiny Homes on Wheels* have a chassis, axles, and wheels and are intended for trailering. They are *not* self-contained so must be hooked up to utilities. They do not meet the IRC standards nor are they certified by HUD for long-term residential use, but can be certified by L&I for short-term recreational use. And they must be licensed by the state Department of Licensing for transport on the highways. They are analogous to park model trailers.
- *Type 2 Tiny Homes on Wheels* are similar to Type 1 THOWs, but *are* self-contained, meaning they have tanks to hold water and sewage and have batteries for power so that they don't always need to be connected to utilities. They do not meet the IRC standards nor can they be certified by HUD for long-term residential use, but can be certified by L&I for short-term recreational use. And they must be licensed by the state Department of Licensing for transport on the highways. They are analogous to recreational vehicles (RVs).

Regarding building permit requirements, please note that the Council already adopted the newest International Residential Code, including Appendix Q, which contains the building code rules for tiny homes.

We would also like to point out that staff met several times with some tiny home proponents who proposed a third type of THOW. This type wouldn't meet IRC or HUD standards, but would be based on standards we specifically adopt in our code. These standards, they claimed, would be based on ANSI standards (what L&I uses to certify RVs) plus some additional standards (they referred to them as ANSI++) and our Building Official would have to certify them for use in Whatcom County. However, this approach would create significant jurisdictional regulatory inconsistencies since such units wouldn't be able to be used in any other jurisdiction (including the cities in Whatcom County) as they would only be "certified" for use in unincorporated Whatcom County under our own unique standards.

These proponents were also asking that these types of THOWs be able to be used for guest lodging for longer than 120 days<sup>2</sup>, which is our standard "temporary recreational occupancy" time limit under existing code. Extending temporary recreational occupancy would essentially make these THOW's

<sup>2</sup> For all Temporary Recreational Occupancies – On individual lots, the maximum length of stay of any recreational vehicle on a lot may not exceed a total of 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days nor more than 30 days total per calendar year.

permanent accessory dwelling units and raise potential GMA challenges and cause greater impacts that come with such increased densities, especially in rural areas.

Council should also be aware that staff tried very hard to figure out a way to allow “tiny home villages” (including those allowing site built tiny homes) in rural areas. However, GMA rural density restrictions significantly limit the potential for such “villages” in rural areas—meaning they would have to meet the underlying rural low density zoning just like any other subdivision. Our conclusion was that such tiny home villages are more likely to be created in cities or UGAs (which allow higher urban densities) and then only when adequate utilities are available, which our cities generally won’t extend until the property is annexed. But we do have existing (nonconforming at least in terms of density) mobile home and RV parks, so allowing the appropriate type of tiny homes within them at least furthers the affordable housing goal.

### **Allowing Duplexes in Planned Unit Developments**

Another amendment proposed as a way to increase affordable housing options is to allow duplexes in certain zones when a project is developed as a Planned Unit Development (PUD) (WCC Chapter 20.85). PUDs:

- Allow certain uses beyond those allowed in the underlying zone when a project is developed as a planned neighborhood community;
- Can only be developed within Urban Growth Areas and have to be at least two acres in size (except under certain conditions listed in WCC 20.85.020);
- Have additional standards for buffering, open space, circulation, access, parking, storage, and utilities;
- Allow for increased densities (WCC 20.85.108);
- Allow a relaxation of dimensional standards (WCC 20.85.109); and,
- Can only be approved by Council.

Currently PUDs allow single-family and multi-family residential uses, but not duplexes. To rectify this incongruity and help promote affordable housing, staff is proposing amendments to WCC 20.85.050.

**Table 1. Defining characteristics of the various types of "homes"**

<b>Characteristic</b>	Site-Built Home	Site-Built Tiny Home	Manufactured (Mobile) Home	Manufactured Tiny Home	Park Model Trailer	Type 1 Tiny Home on Wheels	Recreational Vehicle	Type 2 Tiny Home on Wheels
Meets IRC standards for permanent dwelling unit	Yes	Yes	Yes	Yes	No	No	No	No
<b>OR</b> Is HUD certified	No	No	Yes	Yes	No	No	No	No
Is L&I certified for Use <sup>3</sup>	No	No	Yes, as a permanent dwelling unit	Yes, as a permanent dwelling unit	Yes, for recreational use	Yes, for recreational use	Yes, for recreational use	Yes, for recreational use
Is DOL licensed	No	No	No	No	No	No	Yes	Yes
Is intended/ licensed for long-term or short-term residential use	long-term	long-term	long-term	long-term	short-term	short-term	short-term	short-term
Is self-contained (wastewater, water, power) (if not, must be connected to utilities)	No	No	No	No	No	No	Yes	Yes
Has chassis and axles/wheels	No	No	Yes when manufactured, but wheels removed once sited	Yes when manufactured, but wheels removed once sited	Yes, when manufactured, but wheels removed once sited	Yes, when manufactured, but wheels removed once sited	Yes	Yes

<sup>3</sup> Certified as a (long-term) permanent dwelling unit or for (short-term) recreational use, as noted.

### III. Amendments

The proposed amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Here is an overview, though.

#### Proposed Tiny Home Regulatory Structure

Based on the characteristics shown in Table 1 each of the four types of tiny homes corresponds or is analogous to a type of (either long- or short-term) residence that the County already regulates. Thus, to simplify or streamline the means to regulate these units, we can just define each of these types of tiny homes as one of our existing types and they would be regulated under existing regulations for that type.

So staff is proposing to add definitions for each of the types: “Tiny Homes,” with subcategories for “site-built tiny homes” and “manufactured tiny homes”; and “Tiny Homes on Wheels,” with subcategories for “Type 1 THOWs” and “Type 2 THOWs” (see Exhibit A, §20.97.435.03 & §20.97.435.04). Then we’re proposing to amend the definitions for “Mobile Home” to include “Manufactured Tiny Homes” (Exhibit A, §20.97.250), “Recreational Vehicle” to include “Type 2 THOWs” (Exhibit A, §20.97.335), and “Park Model Trailer” to include “Type 1 THOWs” (Exhibit A, §20.97.292) (plus some grammatical edits).

With these definitional amendments, each of these tiny home types would then be allowed wherever their existing corresponding standard type is allowed under existing code:

- Site-built tiny homes would generally be allowed wherever and under whatever circumstances and standards standard site-built homes are allowed (either as a primary use or an accessory dwelling unit (ADU);
- Manufactured tiny homes would generally be allowed wherever and under whatever circumstances and standards standard mobile (or manufactured) homes are allowed (as a primary use, an ADU, or in a mobile home park);
- Type 1 THOWs would generally be allowed wherever and under whatever circumstances and standards park model trailers are allowed (as temporary guest lodging or in an RV park in a space designated for park models, meaning they have utility hookups); and,
- Type 2 THOWs would generally be allowed wherever and under whatever circumstances and standards recreational vehicles are allowed (as temporary guest lodging or in an RV park).

Table 2 more specifically identifies in which zones the various tiny home types would be allowed, as what type of use, and what permit would be required. These are identical to where we currently allow their existing counterpart (single-family residences, mobile homes, park model trailers, and recreational vehicles). Do note, however, that for simplicity’s sake there may be additional standards or requirements in some zones not shown in the table, but they’d be the same as for their counterparts.

Apart from these definitional amendments, staff is also proposing to clarify our Mobile Home and RV Park Standards. First, we’re proposing to separate the two into distinct sections. We’re also identifying the process by which such a park can be permitted (binding site plan or condominium), and that CC&R’s must be submitted and approved (so that we can ensure long-term maintenance and operations are dealt with properly). Apart from that, we’re keeping the rules that applied to both in both, but putting the rules that only apply to one type of park in their respective sections. (See Exhibit A, §20.80.950 and §20.80.955.)

Under the proposed regulations, one could develop a mobile home park for mobile homes, manufactured tiny homes, or a mix of the two; and an RV park for RV’s, Type 2 THOWs, or a mix of the two. Mobile home parks are allowed as a conditional use in the Resort Commercial (RC), Urban

Residential Mixed (UR-MX), and Urban Residential – Medium Density (URM) Districts. Recreational vehicle (RV) parks are allowed as a conditional use in the Resort Commercial (RC), Tourist Commercial (TC), and Point Roberts Special Districts.

Table 3 shows how many mobile home and RV parks currently exist in the County. In total there are 39 mobile home parks and 7 RV parks, containing 2,858 spaces, 1,881 of which can be used for park models or Type 1 THOWS.

#### **Duplexes in Planned Unit Developments**

While most of the changes to WCC 20.85.053 shown in Exhibit A are just cleaning up grammar, the two that are policy changes are where “duplexes” has been added to subsections (1) and (2).

## **IV. Comprehensive Plan Evaluation**

The proposed amendments to the regulations (WCC Title 20) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Particularly relevant are:

<b>Goal 3C:</b>	<b>Create opportunity for a broad range of housing types and encourage mixed affordability.</b>
Policy 3C-1:	Support lot clustering, varied lot sizes, small-scale multi-family dwellings, accessory housing, especially accessory dwelling units (ADUs) in single-family zoning, and reductions in infrastructure requirements for subdivisions as incentives for development of housing obtainable by purchasers with the greatest possible mix of needs and household incomes.
Policy 3C-3:	Support development of manufactured and mobile home parks and establish design criteria that will enable them to fit into the surrounding community.
<b>Goal 3E:</b>	<b>Provide for future housing needs by responding to changing household demographics.</b>
Policy 3E-1:	Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
<b>Goal 3F:</b>	<b>Provide incentives to create affordable housing.</b>
Policy 3F-3:	Support innovative housing ideas including co-housing (essentially a micro-community with some centralized facilities), elder cottages (housing units for healthy but aging family members), accessory dwelling units (ADUs) in single family zoning of all jurisdictions, including cottage designs available at planning department front desk, and shared living residences or group quarters in UGAs, and educate the public about them.

**Table 2. Zoning Districts where Tiny Homes would be allowed (and by what Permit<sup>4</sup>) under the proposed rules**

Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Urban Residential (UR)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit<sup>5</sup> (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence<sup>6</sup> (ADM)</li> <li>• Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>
Urban Residential – Medium Density (URM)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (AAU)</li> <li>• Mobile Home Parks (CUP)</li> <li>• Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Urban Residential Mixed (UR-MX)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (AAU)</li> <li>• Mobile Home Parks (CUP)</li> <li>• Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Residential Rural (RR)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>
Rural Residential-Island (RR-I)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Eliza Island (EI)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> </ul>		

<sup>4</sup> P = Permitted; ACC = Accessory Use; ADM = Administrative Approval; CUP = Conditional Use

<sup>5</sup> For all ADUs – Some zoning districts have a minimum lot size requirement for detached ADUs and some areas require that accessory apartments and detached ADUs are consistent with the underlying zoning.

<sup>6</sup> For all Temporary Caregiver/Invalid Residences – One year, renewable, plus additional standards.

Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Rural (R)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>
Point Roberts Transitional Zone (TZ)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Agriculture (AG)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Farm Worker Residence (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Farm Worker Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Farm Worker Residence (ADM)</li> </ul>
Rural Forestry (RF)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Forestry Worker Residence (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporary Recreational Occupancy<sup>7</sup> (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily<sup>8</sup> in an RV Park (P)</li> </ul>
Commercial Forestry (CF)				<ul style="list-style-type: none"> <li>• Temporary (6 mos.) living quarters for trail crews, fire crews, nursery crews, logging crews, maintenance crews and watchmen (P)</li> </ul>
Recreation & Open Space (ROS)	<ul style="list-style-type: none"> <li>• Caretaker's Residence (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Caretaker's Residence (P)</li> </ul>		
Rural General Commercial (RGC)				
Neighborhood Commercial Center (NC)				

<sup>7</sup> For all Temporary Recreational Occupancies – On individual lots, the maximum length of stay of any recreational vehicle on a lot may not exceed a total of 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days nor more than 30 days total per calendar year.

<sup>8</sup> In RV Parks the maximum length of stay may not exceed 180 days for any one-year time period.

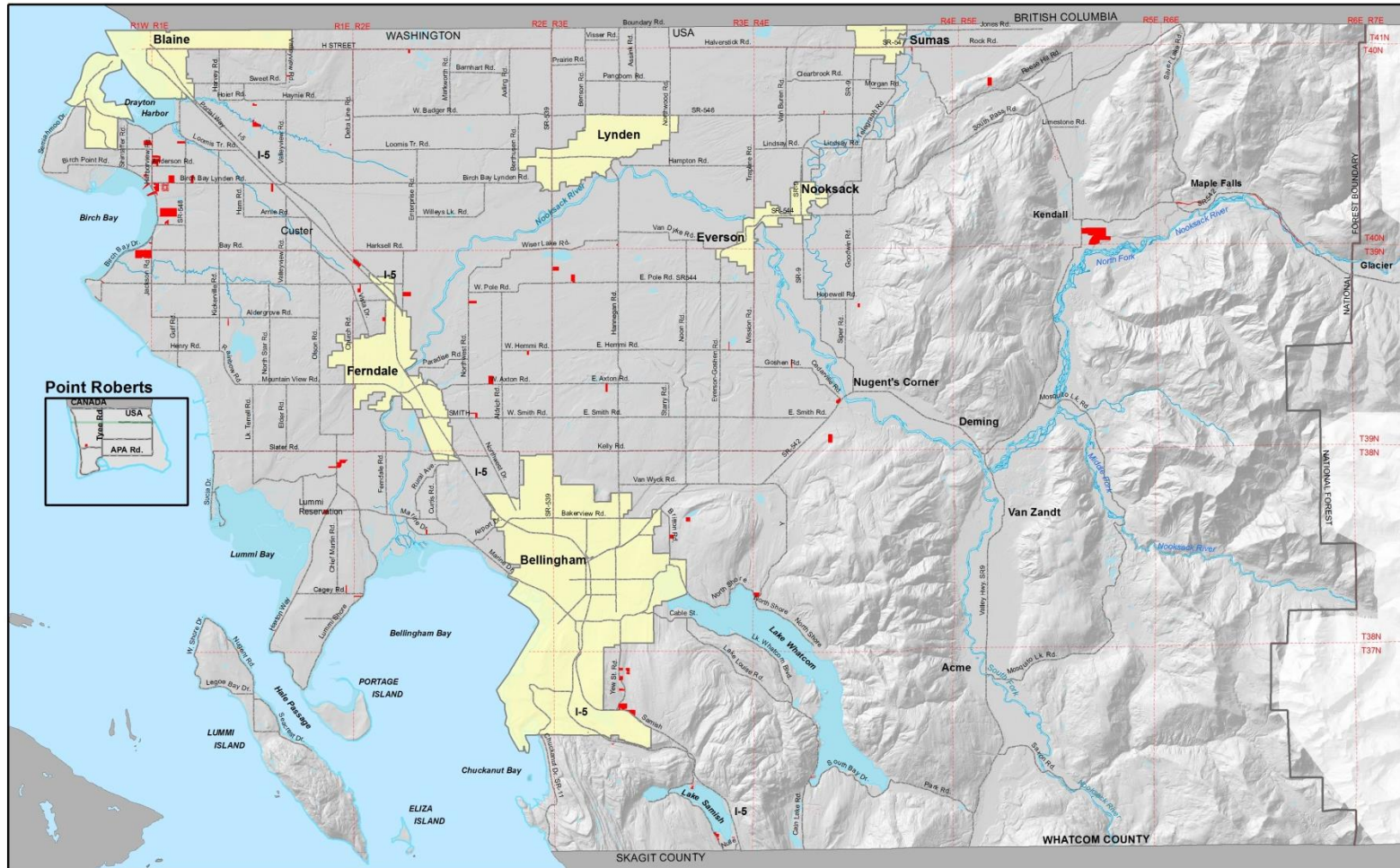
Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Small Town Commercial (STC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>		<ul style="list-style-type: none"> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
General Commercial (GC)				
Tourist Commercial (TC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
Resort Commercial (RC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Mobile Home Parks (CUP)</li> <li>• Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
Light Impact Industrial (LII)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
General Manufacturing (GM)				
Heavy Impact Industrial (HII)				
Rural Industrial And Manufacturing (RIM)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
Airport Operations (AO)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
Point Roberts Special District (overlay zone)	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone, plus:</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone, plus:</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>
Cherry Point Industrial (CP)				

Table 3. Mobile Home & RV Parks in Whatcom County

Name	Type	Zone	Acres	Assessor LUCODE	Total No. of Units	No. of Park Model Spaces	No. of MH Spaces
Agate Bay Mobile Estates	MH Park - Leased Spaces	R5A	10.9	1525 M/H PK 25 SP	25		25
Baywood MHP	MH Park - Leased Spaces	URM6	23.4	1599 M/H PK+99 SP	47		47
Birch Bay Retirement Park	MH Park - Leased Spaces	UR4	3.9	1518 M/H PK 18 Sp	17		17
Birch Bay Trailer Court	MH Park - Leased Spaces	RC	33.9	1152 M/H IO-inPK	151	18	133
Britton Rd. MH Court	MH Park - Leased Spaces	UR	4.8	1500 M/H PK	4		4
Calmore Cove MHP	MH Park - Leased Spaces	RR2/R2A	15.8	1545 M/H PK 45 SP	41	5	36
Cedar Grove MHP	MH Park - Leased Spaces	R10A	26.3	1599 M/H PK+99 SP	105		105
Double L Ranch MHP	MH Park - Leased Spaces	R5A	15.3	1524 M/H PK 24 SP	24	2	22
Edgewater Resourt MHP	MH Park - Leased Spaces	RC	4.8	1547 M/H PK 47 SP	25	12	13
Evergreen Manor MHP	MH Park - Leased Spaces	R5A	19.6	1560 M/H PK 60 SP	43		43
Evergreen Retreat MHP	MH Park - Leased Spaces	R10A	1.5	1516 M/H PK 16 SP	16		16
Fairfield Mobile Court	MH Park - Leased Spaces	UR4	10.2	1526 M/H PK 26 SP	17		17
Forest Park MHP	MH Park - Leased Spaces	URMX6-12	5.6	1553 M/H PK 53 SP	50		50
Gulfside MHP	MH Park - Leased Spaces	RR1	1.0	1505 M/H PK 5 SP	4		4
Harborview MHP	MH Park - Leased Spaces	R5A	19.9	1516 M/H PK 16 SP	15		15
Hartvig MHP	MH Park - Leased Spaces	UR4	6.1	1508 M/H PK 8 SP	7		7
Hidden Valley MHP	MH Park - Leased Spaces	R5A	1.3	1508 M/H PK 8 SP	6	4	2
Hidden Village Estates	MH Park - Leased Spaces	R2A	14.6	1599 M/H PK+99 SP	12	2	10
Hilltop Haven MHP	MH Park - Leased Spaces	URM6-12/R10A	8.5	1525 M/N PK 25 SP	25		25
Lake Terrell Mobile Ranch	MH Park - Leased Spaces	R5A	5.0	1516 M/H PK 16 SP	7		7
Larsens Mobile Manor	MH Park - Leased Spaces	RR2A	9.3	1555 M/H PK 55 SP	55		55
Mantheys MHP	MH Park - Leased Spaces	R10A	23.2	1557 M/H PK 57 SP	57		57
Maple Leaf Court	MH Park - Leased Spaces	R10A	9.6	1522 M/H PK 22 SP	22		22
Maplewood Meadows	MH Park - Leased Spaces	R5A	20.4	1520 M/H PK 20 SP	19		19
Marine Dr. MHP	MH Park - Leased Spaces	RR2A	4.3	1511 M/H PK 11 SP	10		10
Mobile Home Manor	MH Park - Leased Spaces	AG	1.3	1511 M/H PK 11 SP	11		11
Mt. Baker MHP	MH Park - Leased Spaces	R5A	8.5	1530 M/H PK 30 SP	20		20
Nooksack Valley MHP	MH Park - Leased Spaces	AG	1.7	1507 M/H PK 7 SP	7		7
NW Mobile Park	MH Park - Leased Spaces	AG	11.8	1526 M/H PK 26 SP	27		27

Plaza Park	MH Park - Leased Spaces	R5A	14.1	1591 M/H PK 91 SP	27	2	25
Royal Coachman Mobile Estates	MH Park - Leased Spaces	R5A	9.9	1528 M/H PK 28 SP	28		28
See Haven MHP	MH Park - Leased Spaces	UR4	1.3	1512 M/H PK 12 SP	9		9
Sumas MHP	MH Park - Leased Spaces	AG	2.1	1508 M/H PK 8 SP	8		8
Sunny Point Trailer Park	MH Park - Leased Spaces	STC	4.2	1508 M/H PK 8 SP	2		2
Gulf Aire Condo	MH Park - Owned Spaces	TZ		1417 M/H IN CONDO PP	16		16
Lake Samish Terrace	MH Park - Owned Spaces	RR2		1417 M/H IN CONDO PP	53		53
Latitude 49 Resort Park Condo	MH Park - Owned Spaces	RC		1418 PRK MOD IN CONDO RP	315	315	0
Smallwood Shores Condo	MH Park - Owned Spaces	R5A		1416 M/H IN CONDO RP	10		10
Wildwood Resort Condo	MH Park - Owned Spaces	R5A		1418 PRK MOD IN CONDO RP	84	84	0
Beachwood Resort	RV Park	URM6	76.6	7516 RV PARKS	326	326	
Birch Bay Leisure Park	RV Park	URM6	81.1	7816 RV PARKS	603	603	
Black Mt. Ranch	RV Park	R5A	171.7	7499 OTHER RECREAT	315	315	
North Bay Park	RV Park	URM6	2.5	7516 RV PARKS	33	33	
Richmond Resort	RV Park	RC	1.4	7516 RV Parks	10	10	
Sea Breeze RV Park (PM within RV Park)	RV Park	RC	7.9	1155 PM IO-in PK	4	4	
Whatcom Meadows	RV Park	R5A	159.1	7519 OTHER RESORTS	146	146	
Total					2858	1881	977

Table 4. Locations of Mobile Home and RV Parks in Whatcom County



## Whatcom County

### Legend

■ Mobile Home Park

June 2021

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT: Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any use of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

0 0.75 1.5 3 4.5 6 miles



## **V. Draft Findings of Fact and Reasons for Action**

Staff recommends the Council adopt the following findings of fact and reasons for action:

1. The County Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.
2. Additionally, Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options.
3. PDS submitted an application (PLN2021-00012) to make amendments to Whatcom County's zoning regulations (WCC Title 20) to provide these affordable housing options.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 20, 2021.
5. Notice of the subject amendments was submitted to the Washington State Department of Commerce on May 20, 2021, for their 60-day review.
6. On June 24, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed amendments.
7. The County Council held a duly noticed public hearing on the proposed amendments on October 29, 2021, and reviewed and considered the Planning Commission recommendation, staff recommendations, and public comments on the proposed amendments.
8. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
9. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

## **VI. Proposed Conclusions**

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VII. Recommendations**

1. Planning and Development Services recommends that the Council adopts the proposed regulations shown in Exhibit A.
2. The Planning Commission voted 7-0 to recommend approval of the proposed amendments to the County Council.

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING TO PROVIDE ADDITIONAL AFFORDABLE HOUSING OPTIONS, INCLUDING ALLOWING AND REGULATING TINY HOMES AND ALLOWING DUPLEXES IN PLANNED UNIT DEVELOPMENTS**

**WHEREAS,** The County Council is interested in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.

**WHEREAS,** Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options; and,

**WHEREAS,** The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

**WHEREAS,** The County Council hereby adopts the following findings of fact:

**FINDINGS OF FACT**

1. The County Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.
2. Additionally, Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options.
3. PDS submitted an application (PLN2021-00012) to make amendments to Whatcom County's zoning regulations (WCC Title 20) to provide these affordable housing options.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 20, 2021.
5. Notice of the subject amendments was submitted to the Washington State Department of Commerce on May 20, 2021, for their 60-day review.
6. On June 24, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed amendments.
7. The County Council held a duly noticed public hearing on the proposed amendments on October 23, 2021, and reviewed and considered the Planning Commission recommendation, staff recommendations, and public comments on the proposed amendments.
8. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
9. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

**CONCLUSIONS**

1. The amendments to the development regulations are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

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

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED as to form:

( ) Approved      ( ) Denied

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, Executive

Date: \_\_\_\_\_

# Exhibit A: Proposed Amendments to the Whatcom County Code to Allow and Regulate Tiny Homes & to Allow Duplexes in Planned Unit Developments

## Regarding Tiny Homes:

### TITLE 20 ZONING

#### Chapter 20.80 Supplementary Requirements

##### **20.80.950 Mobile Home (including Manufactured Tiny Home) and Recreational Vehicle Park Standards.**

All mobile home ~~and recreational vehicle~~ parks shall meet the following standards:

- (1) Mobile home parks shall be developed through either a Binding Site Plan pursuant to WCC Title 21 (Land Division) or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). In either case:
  - (a) An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.
  - ~~(a)~~(b) A declaration of covenants addressing and ensuring long-term compliance with the appropriate requirements herein shall be submitted for review and approval.
  - (c) Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
- (2) Where not specified by the applicable zoning district, mobile home parks shall have:
  - (a) A maximum density of ~~seven~~ 7 lease spaces per acre when public water and sewer are provided;
  - (b) A maximum density of ~~three~~ 3 lease spaces per acre when public water and sewer are not provided;
  - (c) A minimum parcel size of ~~two~~ 2 acres.
- ~~(3) Where not specified by the applicable zoning district, recreational vehicle parks shall have:~~
  - ~~(a) A maximum density of 15 lease spaces per acre when public water and sewer are provided;~~
  - ~~(b) A maximum density of seven lease spaces per acre when public water and sewer are not provided;~~
  - ~~(c) A minimum parcel size of two acres.~~
- ~~(4)~~(3) Mobile home parks shall provide storage area for boats, recreational vehicles, and other large items. Recreational vehicle parks may provide such storage areas. Said storage areas shall be screened consistent with these standards.
- ~~(5)~~(4) Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property. Within a mobile home park, no mobile home, other major structure, or outdoor storage shall be located closer than 20 feet to the perimeter of the site.

**Comment [CES1]:** Mobile home and RV park standards have been separated into 2 sections, with the appropriate existing & new rules placed into each

**Comment [CES2]:** A requirement of ESSB 5383 for tiny home parks (and it should be for mobile home parks).

~~(6)~~(5) Along the edges of mobile home parks, walls or vegetative screening shall be provided where needed to protect residents from undesirable views, lighting, noise, or other off-site influences, or to protect occupants of adjoining property from potentially adverse influences within the mobile home park. In particular, extensive off-street parking areas and service areas for loading and unloading other than passenger vehicles, and for storage and collection of trash and garbage, shall be screened.

~~(7)~~ A 30-foot landscaped buffer area or screening composed of suitable native vegetation shall be placed around all common storage areas and at all perimeters of any recreational vehicle park. The purpose of said buffer is to protect on a year-round basis the adjacent property or roadways from unsightliness, visual distraction and/or noise impacts. The buffer area may be reduced where it can be demonstrated that alternative screening can adequately accomplish the purposes stated in this subsection. Perimeter buffers shall be supplemented by a fence or other device where trespass is a potential problem. No structures, development or other activities shall occur within any buffer areas; provided, that trails may be located within those buffer areas which are at least 50 feet in width.

~~(8)~~(6) There shall be landscaping developed consistent with WCC 20.80.300 ([Landscaping](#)) within open areas of ~~the mobile home park and recreational vehicle~~ parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.

~~(9)~~(7) Mobile homes ~~and recreational vehicle~~ parks shall keep 40% ~~percent~~ of the site free of buildings, structures, parking areas, and other impervious surfaces.

~~(10)~~ An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.

~~(11)~~(8) On-site recreational amenities with at least one substantial facility serving the users of a park or identified area shall be provided. Such substantial facilities may include tennis courts, children's play areas with equipment, or a swimming pool. The type and size of facility shall be appropriate to the type and amount of clientele being served.

~~(12)~~ Maximum length of stay in recreational vehicle parks shall not exceed 180 days for any one-year time period.

~~(13)~~(9) Interior roads within mobile home ~~and recreational vehicle~~ parks shall be private, unless the County Engineer determines that the development of public roads is necessary.

~~(14)~~(10) For each mobile home space there shall be provided and maintained at least two parking spaces conforming ~~with to zoning ordinance~~ the requirements of WCC 20.80.500, et seq. ([Off-Street Parking and Loading Requirements](#)). In addition to occupant parking, guest and service parking shall be provided within the boundaries of the park at a ratio of one parking space for each two mobile home spaces.

~~(15)~~(11) There shall be a minimum of 10 feet of separation maintained between all mobile homes on the site. Accessory structures may be located no closer than 10 feet to any mobile home or five feet to other accessory structures.

~~(12)~~ Each rental space shall be numbered on the site plan and the number shall be prominently displayed on the site. All mobile home parks shall comply with WCC Chapter 24.04 ([Recreational Vehicle Park and Subdivision Rules](#)) regarding utility provision. Utility (wastewater, water, electricity) hook-ups shall be provided for each rentable or leasable space.

Comment [CES3]: Moved above

#### **20.80.955 Recreational Vehicle (including Tiny Homes on Wheels) Park Standards.**

All recreational vehicle parks shall meet the following standards:

- (1) Recreational vehicle parks shall be developed through either a Binding Site Plan pursuant to WCC Title 21 (Land Division) or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). In either case:
  - (a) An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.
  - (b) A declaration of covenants addressing and ensuring long-term compliance with the appropriate requirements herein shall be submitted for review and approval.
  - (c) Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
- (2) Where not specified by the applicable zoning district, recreational vehicle parks shall have:
  - (a) A maximum density of 15 lease spaces per acre when public water and sewer are provided;
  - (b) A maximum density of 7 lease spaces per acre when public water and sewer are not provided;
  - (c) A minimum parcel size of 2 acres.
- (3) Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property.
- (4) A 30-foot landscaped buffer area or screening composed of suitable native vegetation shall be placed around all common storage areas and at all perimeters of any recreational vehicle park. The purpose of said buffer is to protect on a year-round basis the adjacent property or roadways from unsightliness, visual distraction, and/or noise impacts. The buffer area may be reduced where it can be demonstrated that alternative screening can adequately accomplish the purposes stated in this subsection. Perimeter buffers shall be supplemented by a fence or other device where trespass is a potential problem. No structures, development, or other activities shall occur within any buffer areas; provided, that trails that are at least 5 feet in width may be located within those buffer areas.
- (5) There shall be landscaping developed consistent with WCC 20.80.300 (Landscaping) within open areas of recreational vehicle parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.
- (6) Recreational vehicle parks shall keep 40% of the site free of buildings, structures, parking areas, and other impervious surfaces.
- (7) On-site recreational amenities with at least one substantial facility serving the users of a park or identified area shall be provided. Such substantial facilities may include tennis courts, children's play areas with equipment, or a swimming pool. The type and size of facility shall be appropriate to the type and amount of clientele being served.
- (8) Maximum length of stay in recreational vehicle parks shall not exceed 180 days for any one-year time period.
- (9) Interior roads within recreational vehicle parks shall be private, unless the County Engineer determines that the development of public roads is necessary.
- (10) All recreational vehicle parks shall comply with WCC Chapter 24.04 (Recreational Vehicle Park and Subdivision Rules) regarding utility provision. Utility (wastewater, water, electricity) hook-ups shall be provided for each rentable or leasable space designated for park model trailers and Type 1

**Comment [CES4]:** A requirement of ESSB 5383 for tiny home parks.

**Comment [CES5]:** Moved from 20.97.340 (definition of RV Park), as these are regulations, not definitions.

**Comment [CES6]:** A requirement of ESSB 5383 for tiny home parks.

THOWs. Spaces designated solely for self-contained recreational vehicles may use communal facilities.

## Chapter 20.97 Definitions

### 20.97.250 Mobile Home (a.k.a, Manufactured Home).

“Mobile home” means a dwelling unit designed for long-term human habitation by one family and having complete living facilities; constructed and fabricated into a complete unit at a factory and capable of being transported to a location of use on its own chassis and wheels; identified by a model number and serial number by its manufacturer; and designed primarily for placement on an impermanent footing. This includes manufactured tiny homes (see “Tiny Home.”) A unit ~~which that~~ was originally built as a mobile home but ~~which~~ has substantially lost its mobility ~~through by~~ being placed on a permanent footing, the tongue and axle removed, skirting is installed, and ~~which that~~ wholly meets state standards for such units, shall not be considered to be a mobile home and shall be treated as a single-family dwelling for the purpose of this ~~ordinance code only when it is fixed to a permanent footing and tongue and axle have been removed and skirting installed.~~

### 20.97.255 Mobile Home Park.

“Mobile home park” means any parcel or adjacent parcels of land in the same ownership ~~which that~~ is ~~utilized~~ used for occupancy by more than two mobile homes. This term shall not be construed to mean campgrounds, recreational vehicle parks, or tourist facilities for camping.

### 20.97.292 Park Model Trailer.

“Park model trailer” means a trailer designed to provide seasonal or temporary living quarters; ~~which are not self-contained and thus may need to be used with~~ temporarily connected ~~editions~~ to utilities ~~necessary~~ for operation of installed fixtures and appliances; ~~it~~ has a gross trailer area not exceeding 400 square feet; ~~or and~~ is approved by the state as a park model trailer. This includes Type 1 THOWs (see “Tiny Home on Wheels”).

### 20.97.335 Recreational Vehicle.

“Recreational vehicle” means a motor vehicle; or portable structure capable of being transported on ~~the~~ highways by a motor vehicle; ~~that is~~ designed and intended for casual or short-term human occupancy for travel, recreational, and vacation uses without a permanent foundation; identified by a model number (RV), serial number, and vehicle registration number; and equipped with limited water storage and other self-contained living facilities. For the purposes of these regulations, the term “recreational vehicle” shall include self-contained campers, motor-homes, Type 2 Tiny Home on Wheels, and travel trailers, ~~and but~~ shall not include park model trailers or Type 1 Tiny Home on Wheels, as they are not self-contained units.

### 20.97.340 Recreational Vehicle Park.

“Recreational vehicle park” means a parcel of private land in which three or more contiguous sites are primarily for occupancy by recreational vehicles for travel, recreation, or vacation uses. ~~For~~ Within

mobile home parks, only spaces that are designated and/or are used for recreational vehicles shall constitute a recreational vehicle park. Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property. For the purposes of these regulations, the term “recreational vehicle park” shall include camping clubs.

**Comment [CES7]:** These are regulations, not definitions, and have been moved to 20.80.955.

#### **20.97.435.03 Tiny Home.**

A tiny home is a dwelling unit that is 400 square feet or less in floor area (excluding sleeping lofts). For the purposes of this code there are two types of tiny homes, as described below. For Tiny homes on Wheels see WCC 20.97.435.04.

**Comment [CM8]:** This portion matches the definition in appendix Q in the IRC. The size is also consistent with the definition of a park model in WAC 296-150P-00200.

1. *Site-Built Tiny Home.* A tiny home built on-site on a permanent foundation that meets the minimum requirements of the International Residential Code (IRC), including provisions of Appendix Q, and is reviewed and inspected by Whatcom County. For the purposes of this code they are equivalent to and are permissible under the same rules as any standard single-family dwelling.
2. *Manufactured Tiny Home.* A factory-built tiny home bearing a certification tag from the Washington State Department of Labor and Industries (L&I) or other approved third party inspection agency stating it is approved for use as a single-family residence per the current edition of the International Residential Code (IRC) or Housing and Urban Development (HUD) requirements. Manufactured tiny homes usually have wheels and a chassis when they come out of the factory, and typically have the wheels removed prior to placing it on its manufacturer-approved foundation. For the purposes of this code they are equivalent to and are permissible under the same rules as any standard mobile home.

#### **20.97.435.04 Tiny Home on Wheels (THOWs)**

A Tiny Home on Wheels is a portable structure licensed to be transported on the highways by a motor vehicle; designed and intended for casual or short-term human occupancy for travel, recreational, vacation and other temporary uses without a permanent foundation; in a space of 400 square feet or less in floor area (excluding sleeping lofts). For the purposes of this code there are two types of tiny homes on wheels, as described below.

1. *“Type 1 THOW”* is a THOW that is not self-contained, and thus needs to be temporarily connected to utilities necessary for operation of installed fixtures and appliances. For the purposes of this code they are equivalent to and are permissible under the same rules as for Park Model Trailers.
2. *“Type 2 THOW”* is a THOW that is self-contained and may use communal utility services (water, wastewater). For the purposes of this code they are equivalent to and are permissible under the same rules as for Recreational Vehicles (RVs).

## Regarding Duplexes in Urban Zones via Planned Unit Developments:

### Title 20 ZONING

#### Chapter 20.85 Planned Unit Developments (PUD)

##### 20.85.050 Permitted Uses.

**.051** Uses ~~outright permitted-allowed~~ in a planned unit development shall include those permitted, accessory, and conditional uses allowed in the underlying zone district(s), ~~as well as and~~ such other uses as provided in WCC 20.85.052 ~~to through~~ 20.85.055. For areas located within a Water Resource Protection Overlay District, the more restrictive use provisions of Chapter 20.71 WCC shall apply.

**.052** In addition to the uses allowed in the underlying zone, the following uses shall be allowed outright ~~where when~~ they are only serving the planned unit development and ~~where~~ all other applicable standards are met:

- (1) Community buildings;
- (2) Indoor recreation facilities, including athletic clubs or fitness centers, racquetball courts, swimming pools, tennis courts, or other similar uses;
- (3) Outdoor recreation facilities, including swimming pools, tennis courts, recreational trails, or similar use; and
- (4) Recreational vehicle storage areas.

**.053** ~~Even though they may not be allowed in the underlying zone(s).~~ A planned unit development may also authorize add the following additional land uses ~~activities, as follows;~~ provided the criteria of WCC 20.85.054 are met:

- (1) ~~For In~~ the Urban Residential and Rural zones, duplexes and multifamily dwellings consistent with the density requirements of the underlying zone, except as that may be modified by the provisions of WCC 20.85.108 (Density Increases). The number of units attached may be greater than would otherwise be allowed by the underlying zoning.
- (2) ~~In For~~ the Urban Residential and Urban Residential Medium zones, duplexes and those uses allowed in the Neighborhood Commercial zone ~~are may~~ also be permitted. In addition, both resort- and non-resort-oriented transient accommodations, such as inns or hotels, may be permitted; provided, that:
  - (a) The total number of sleeping units shall not exceed 50%-percent of the total number of dwelling units that would be allowed on the property by the underlying zone regulations;
  - (b) Each sleeping unit shall count as one dwelling unit for the purpose of determining the total number of dwelling and sleeping units, in combination, permitted on the property;
  - (c) It can be demonstrated that the overall development will not generate more traffic than conventional residential development at the density allowed in the zone.
- (3) ~~In For~~ the General Commercial zone, those uses allowed in the Urban Residential Medium zone are ~~appropriate~~ allowed.
- (4) ~~In For~~ the Resort Commercial zone:

Comment [CES9]: Policy change

Comment [CES10]: Policy change

- (a) Multiple single-family dwellings per lot are permitted if developed as condominiums under state law; and
- (b) Single-family attached dwellings (at a base gross density of ~~seven-7~~ units/acre); ~~and~~.
- (5) ~~In For~~ the Light Impact Industrial zone, those uses allowed in the Urban Residential Medium, Neighborhood Commercial, ~~and/or~~ General Commercial zones are ~~appropriate~~ allowed.

**.054** In order ~~to expand for those additional~~ uses listed ~~allowed~~ in WCC 20.85.053 to be authorized, the applicant ~~shall~~ must demonstrate:

- (1) That the primary land use activity of the planned unit development ~~shall be those uses~~ is one allowed by the underlying zone district;
- (2) That the ~~expanded~~ additional uses will benefit and serve the residents or employees of the proposed planned unit development; and
- (3) That all other applicable approval criteria and standards are met.

**.055** Where a proposed development is located in two or more zone districts, the uses allowed in the applicable districts may be located on any portion of the site; provided, that all applicable standards are met.

**.056** For purposes of determining appropriate standards, the requirements of the zone district allowing the use would apply. If the use is allowed by two or more districts, the lesser standards would apply.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-608

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<b>File ID:</b>	AB2021-608	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/19/2021	<b>Entered by:</b>	ldevries@co.whatcom.wa.us		
<b>Department:</b>	Prosecuting Attorney's Office	<b>File Type:</b>	Presentation		
<b>Assigned to:</b>	Council Committee of the Whole				<b>Final Action:</b>
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

LEAD and GRACE Annual Community Impact Report

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Presentation for 10.26.2021

# PROGRAM UPDATE

**Presented by:**

**Malora Christensen, GRACE & LEAD Program  
Manager**

**Tommy McAuliffe, LEAD Program Supervisor**



# PROGRAM OVERVIEW



**Intensive case management for people who:**

- Have committed low-level law violations



**Intensive case management for people who:**

- Frequently contact 911 for non-emergencies
- Cycle through EMS, the emergency department, or criminal justice system

# What is LEAD?

The LEAD program offers people who have committed low-level law violations a path out of the criminal justice system and into intensive case management.

**“Our deputies often encounter situations where arresting the person does not serve the best interest of the individual or the community as a whole.**

**LEAD provides an option for positive change and growth instead of repetitive incarceration.”**

*-Chief Deputy Jason Gum, Whatcom County Sheriff's Office*

# LEAD Partners

- Whatcom County Prosecutor's Office
- Whatcom County Public Defender's Office
- Whatcom County Health Department
- Whatcom County Sheriff's Office
- Bellingham Police Department
- All small city police departments in Whatcom County
- Community programs addressing homelessness, mental health, substance abuse and medical

# LEAD PROGRAM GOALS



Increase  
Community Safety



Address Racial Disparities in  
the Criminal Justice System



Improve Health  
and Well-Being



# VOICE OF LEAD FILM

# Why do we need LEAD?

Arrest and incarceration are ineffective at offering meaningful help for people with behavioral health issues.

# Why do we need LEAD?

Arrest and incarceration can damage relationships between law enforcement and the community.

# Does LEAD Work?

LEAD members are 58% less likely to be arrested after joining the program.

*Source: Seattle's Law Enforcement Assisted Diversion (LEAD): Program effects on recidivism outcomes Susan E. Collins\*, Heather S. Lonzak, Seema L. Clifasefi Harm Reduction Research and Treatment Center, Department of Psychiatry and Behavioral Sciences, University of Washington – Harborview Medical Center, 325 Ninth Ave., Box 359911, Seattle, WA, 98104, USA*

# Does LEAD Work?

LEAD increases the likelihood that members will obtain shelter, unemployment, and income/benefits.

*Source: LEAD Program Evaluation, The Impact of LEAD on Housing, Employment, and Income/Benefits. Seema L. Clifasefi  
Heather S. Lonczak Susan E. Collins*

# How Does LEAD Work?

Currently enrolled: 50 LEAD members

Staff: LEAD Supervisor, 4 Intensive Case Managers, 1 Outreach Specialist

Connections to services in Summer 2021: 180 (housing, mental health, medical, income, employment, transportation, etc.)



# What is GRACE?

GRACE connects people who frequently interact with emergency systems to more effective resources and support.

# GRACE MEMBERS

Residents of Whatcom County who are the “familiar faces” of emergency services.

- Law Enforcement
- EMS/Fire
- Emergency Dept.
- County Jail
- Criminal Legal System



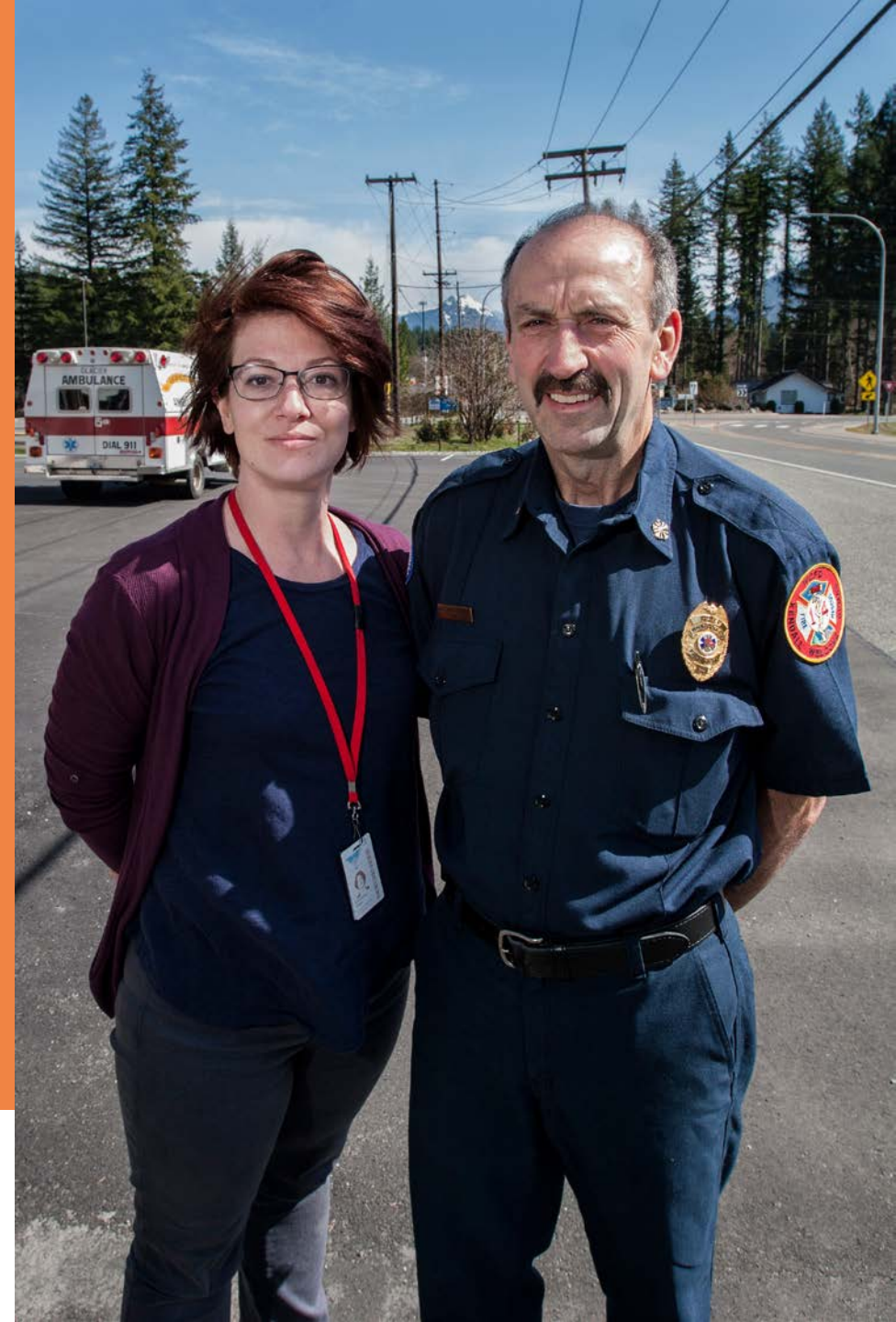
“There is no better feeling than being the person dedicated to helping those in our community with the greatest needs.”

—Captain Joe Frank, Community Paramedic,  
Bellingham Fire Department

# RESULTS:

GRACE served 179 unique individuals  
in the 12 month period July 2019-July 2020.

In 2021, GRACE has 126 individuals.





## DOES THE GRACE PROGRAM WORK?

**Over a one-year period, the GRACE Program worked with 179 people:**

- 52% connected with behavioral health and medical services
- 50 members found permanent housing
- 59 people graduated into stable situations, no longer requiring GRACE case management

# Does GRACE Work?

**Over a one-year period:**

- 52% of people connected with behavioral health and medical services

# Does GRACE Work?

Over a one-year period:

- 50 members found permanent housing

# Does GRACE Work?

Over a one-year period:

- 59 people graduated into stable situations, no longer requiring the GRACE Program



## DOES THE GRACE PROGRAM WORK?

People who were referred by law enforcement had a **95% reduction** in jail bookings.

Overall, GRACE members **reduced emergency medical services contacts by 39%**

# RESPOND WHATCOM: SPECIALIZED CRISIS PROGRAMS

Supportive and stabilizing responses for people with behavioral health needs, medical issues, and trauma

Is 911 responding to someone with a behavioral health issue?

OR

Is this a familiar person with behavioral health issues needing proactive support?

Has 911 been called to respond to a non-emergency medical issue?

&

Has this person frequently called 911 for emergency or non-emergency issues?

Is this an adult having a mental health crisis and/or substance abuse crisis?

OR

Are they in need of support during a mental health crisis and/or substance abuse crisis?

Has this person had frequent contact with the Emergency Department, 911, or jail?

&

Do they lack sufficient care for behavioral health needs, medical issues and/or complex trauma?

Has this person been arrested for a low-level crime and/or had frequent contact with law enforcement?

&

Do they have complex needs stemming from mental health, poverty, and substance abuse?

Is this person having a mental health or substance abuse crisis?

&

Do they need support during a mental health crisis?

## BEHAVIORAL HEALTH DEPUTY/OFFICER

Specialized police response for behavioral health-related calls

*Focus: Behavioral health, legal, outreach, urgent response*

## COMMUNITY PARAMEDICS

Connects people frequently using emergency services for ongoing health issues with effective care

*Focus: Medical, outreach, urgent response*

## CRISIS STABILIZATION CENTER

Overnight facility for adults needing support during a mental health crisis or withdrawal

*Focus: Behavioral health, medical, urgent response*

## GRACE PROGRAM

Intensive case management for people cycling through 911 and other emergency systems

*Focus: Behavioral health, legal, medical, ongoing support, outreach*

## LEAD PROGRAM

Intensive case management for people who've committed low-level offenses

*Focus: Legal, behavioral health, ongoing support, outreach*

## MOBILE CRISIS OUTREACH TEAM

Urgent response by a behavioral health team for people experiencing a mental health/substance abuse crisis

*Focus: Behavioral health, urgent response*

More information: [www.respondwhatcom.org](http://www.respondwhatcom.org)

[Home](#) [About](#) [Our Programs](#) [Community Reports](#)

**IMPROVE LIVES  
REDUCE POLICE CONTACT  
OFFER SUPPORT SERVICES  
KEEP EVERYONE SAFE**

Building caring community health and safety responses in Whatcom County

What We're Doing

# QUESTIONS?





# Whatcom County

COUNTY COURTHOUSE  
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## Agenda Bill Master Report

File Number: AB2020-219

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<b>File ID:</b>	AB2020-219	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	05/13/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
05/19/2020	Council	DISCUSSED	
06/02/2020	Council	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/23/2020	Council Special Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
07/07/2020	Council Committee of the Whole	DISCUSSED	
07/21/2020	Council Committee of the Whole	DISCUSSED	
08/05/2020	Council Committee of the Whole	DISCUSSED	
09/15/2020	Council Committee of the Whole	DISCUSSED	
09/29/2020	Council Committee of the Whole	DISCUSSED	
10/13/2020	Council Committee of the Whole	DISCUSSED	
10/27/2020	Council Committee of the Whole	DISCUSSED	
11/10/2020	Council Committee of the Whole	DISCUSSED	
11/24/2020	Council Committee of the Whole	DISCUSSED	

12/08/2020	Council Committee of the Whole	DISCUSSED
01/12/2021	Council Committee of the Whole	DISCUSSED
01/26/2021	Council Committee of the Whole	DISCUSSED
02/09/2021	Council Committee of the Whole	DISCUSSED
02/23/2021	Council Committee of the Whole	DISCUSSED
03/09/2021	Council Committee of the Whole	DISCUSSED
03/23/2021	Council Committee of the Whole	DISCUSSED
04/06/2021	Council Committee of the Whole	DISCUSSED
04/20/2021	Council Committee of the Whole	DISCUSSED
05/04/2021	Council Committee of the Whole	DISCUSSED
05/18/2021	Council Committee of the Whole	DISCUSSED
06/01/2021	Council Committee of the Whole	DISCUSSED
06/15/2021	Council Committee of the Whole	DISCUSSED
06/29/2021	Council Committee of the Whole	DISCUSSED
07/13/2021	Council Committee of the Whole	DISCUSSED

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**Attachments:**



# Whatcom County

COUNTY COURTHOUSE  
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## Agenda Bill Master Report

File Number: AB2021-395

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<b>File ID:</b>	AB2021-395	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/01/2021	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

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

Discussion and periodic update of the Shoreline Management Program

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

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)

10.26.2021: Discussion of proposed amendments to WCC Chapter 16.16 (Critical Areas)

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## **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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	
10/12/2021	Council Committee of the Whole	DISCUSSED	

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**Attachments:** Staff Memo for 10-26-21, Exhibit F - WCC 16.16 (CAO) 2021-05-13 (PC Approved)



## Memorandum

DATE: October 15, 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

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### Today's Goals

On October 26<sup>th</sup> the Council's Committee of the Whole will continue its review of the SMP Update, focusing on proposed amendments to WCC Chapter 16.16 (Critical Areas).

### Attachments

- **Exhibit F** – WCC Chapter 16.16

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 F (WCC Chapter 16.16, Critical Areas)

*(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. Note, too, that other amendments to other exhibits addressing these issues are listed in the memos dealing with those exhibits, so these may not be ways we're addressing these topics. The complete list was provided to Council in the full staff report.)*

### Topic #3, Consistency with WCC Ch. 16.16 (Critical Areas)

- a) **Ensure Council changes regarding standards for view preservation in the CAO are reflected in the SMP.**

§16.16.235(5) (Activities Allowed with Notification) of the critical areas regulations (Exhibit F) allows for view corridors to be created and maintained (though certain restrictions apply). Subsection (L) has been added to §23.30.030 (Views and Aesthetics) (Exhibit D) that acknowledges and cross-references this allowance (except for in the Natural shoreline environment).

### Topic #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**
  - §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)

**b) Clarify development mitigation requirements.**

The mitigation standards have been clarified in the following sections as described:

- §16.16.260 (General Mitigation Requirements):
  - Subsection (B) now contains text describing what information the Director may use in determining the extent and type of mitigation required. This text had been found repeated in various Articles of Ch. 16.16, so we've moved it to the overall mitigation section.
  - Subsection (C) is a new policy that will allow for off-site mitigation when it's better for the environment. In the past several years of processing permits, staff has found that the best solution overall is not necessarily "on-site and in-kind" mitigation, since sometimes there's not enough room, or that the mitigation is in a place that can't be guaranteed to remain after the initial 5-year monitoring period. Under this new policy, though the preference is still for "on-site and in-kind" (subsection (1)), off-site and in-kind mitigation may be allowed when the applicant demonstrates that greater biological and/or hydrological functions and values will be achieved (subsection (2)), or on-site and out-of-kind mitigation may be allowed when the applicant demonstrates an ecological uplift of biological and/or hydrological functions and values will be achieved (subsection (3)). Subsections (4) and (5) also point to our already existing use of Alternative Mitigation Plans and Mitigation Banking.
  - Like subsection (B), subsections (D) and (E) have been moved from the more specific critical areas rules (habitat conservation areas) to the more general so as to apply more broadly.
  - Subsection (G)(3) has been moved from §23.30.010 (Ecological Protection). This text puts the burden on the applicant "demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts and results in no net loss of shoreline and critical area ecological functions." Since WCC Ch. 16.16 (Critical Areas) is considered a part of the Shoreline Management Program, staff thought it more fitting that all the rules for mitigation plans be located in one place.
- §16.16.680 (Wetlands – Mitigation Standards)
  - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general covers the specific.
  - To account for temporal loss of functions, in subsection (C) staff is proposing to amend the wetland *buffer* mitigation ratio<sup>1</sup> from a standard 1:1 (subsection (C)(1)) to a range of ratios depending on when the mitigation is implemented (subsection (4)) (including at a double ratio for those who don't initially get permits and the mitigation is provided long after the impact (subsection (c))). This section now mimics the HCA mitigation standards (§16.16.760(E)(3)).
- §16.16.740 (Habitat Conservation Area Buffers). Apart from the clarifying amendments, staff is proposing to modify:
  - Subsection (B) (Habitat Conservation Areas Buffer Widths), which includes Table 4. The mitigation schema in Table 4 moves us from an older system of classifying water types and

<sup>1</sup> Note that the ratios for *wetland* mitigation (Table 2, which are from DOE guidance) are not proposed for amendment.

buffer widths to the newer Washington Department of Fish & Wildlife (WDFW) water-typing system. Though we had already adopted this newer system in identifying surface waters of the state (16.16.710(C)(1)(a)), we had not followed through on using that nomenclature for the various types' buffer widths (the table didn't match the text). Table 4 corrects this. The buffer widths themselves are the same except for Type S – Freshwater. It is currently 150 feet, but staff is proposing to increase it to 200 feet, which is the Court recommended width under the Endangered Species Act based on *National Wildlife Federation v. FEMA*<sup>2</sup>. It is also in line with WDFW's newly recommended 200-year site potential tree height (SPTH) buffer for streams containing Chinook salmon<sup>3</sup>, and endangered species.

- §16.16.760 (Habitat Conservation Areas – Mitigation Standards)
  - Certain sections that we moved to §16.16.260 (General Mitigation Requirements) have been deleted, since the general covers the specific.
  - We have added subsection (D) as a reminder to applications that the Army Corps of Engineer Regional General Permit 6 for inland marine waters may apply to their project(s). RGP-6 is a permit issued by the Corps that authorizes the construction of new residential in- and overwater structures in inland marine waters of Washington State while meeting the Endangered Species Act, though it has conditions on the construction.
  - Like with wetland buffer mitigation, we have added subsection (E)(3), doubling the mitigation ratio for those who don't initially get permits (subsection (c)) and the mitigation is provided long after the impact.
- §16.16.640 (Wetland Buffer Modification) and §16.16.745 (Habitat Conservation Area Buffer Modification). In Articles 6 (Wetlands) and 7 (Habitat Conservation Areas) staff is proposing to combine their respective buffer modification rules into one section for each Article, each covering the types of buffer modifications allowed (increase, averaging, reduction, and variance). For wetlands, we have also modified some of the text to be consistent with DOE guidance (Wetlands in Washington State, Volume 2, Appendix 8C, updated 2018), which is based on and considered Best Available Science.

## Topic #8, Habitat

### b) Consider strengthening ecological connectivity and wildlife corridor requirements.

Apart from all the existing rules about maintaining connectivity in WCC Ch. 16.16 (Critical Areas) (Exhibit F), new rules to strengthen ecological connectivity and wildlife corridor requirements in that document include:

- In §16.16.225 (General Regulations), new subsection (C) has been added, requiring development proposals to maintain ecological connectivity and habitat corridors;

<sup>2</sup> Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472

<sup>3</sup> WDFW's 204 ft. buffer is not a hard SPTH; this is the weighted 3<sup>rd</sup> Quantile. WDFW Vol. 2 provides a step-by-step process to determine the Riparian Management Area for a parcel based on the ability of a given soil type to support tree growth. The 200 yr. index curve is variable, and as shown in Figure A2-33 of Vol. 2. The SPTH in Whatcom Co. ranges from 101' to 250'. The buffer on Type S Freshwater is proposed to be 200 feet (16.16.740(B), Table 4), measured, presumably, from the edge of the floodway.

- In §16.16.255 (Critical Areas Assessment Reports) new subsection (C)(3) has been added, strengthening the requirement that connectivity be addressed in assessment reports;
- In §16.16.640 (Wetland Buffer Modification), subsection (A) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity to other wetland and habitat areas;
- In §16.16.745 (Habitat Conservation Area Buffer Modification) subsection (A)(2) allows the Director to increase wetland buffers to protect wetland functions and provide connectivity when a Type S or F waterbody is (among other things) located within 300 feet of another Type S or F water body, a fish and wildlife HCA, or a Category I, II or III wetland.

None of these amendments actually change the buffer widths from wildlife corridors; they only require that applicants address ecological connectivity when a wildlife corridor is present.

**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 WCC 16.16 (Critical Areas) (Exhibit F), in §16.16.255 (Critical Areas Assessment Reports) new subsection (C)(3) has been added, strengthening the requirement that impacts to salmon and forage fish habitat be addressed in assessment reports to improve protections for salmon and forage fish.

**d) Clarify functional disconnect standards for protection of Fish & Wildlife Habitat Conservation Areas**

The term “functional disconnect,” which many people have interpreted differently and is not widely used anymore, has been eliminated in §16.16.630(B) (Wetland Buffers) and §16.16.740 (Habitat Conservation Area Buffers), which now say, “Buffers shall not include areas of an existing, legally established substantially developed surface.” This will preclude including roads or other development in a buffer, but still account for HCAs that substantially extend beyond a road or driveway.

## **Topic #10, Nonconforming**

**a) Ensure consistency with Zoning, CAO, and SMP regarding nonconforming uses and structures.**

In §16.16.275 (Nonconforming Uses, Structures, and Lots) (Exhibit F) two amendments are proposed to align this chapter with Title 20 (Zoning) and Title 23 (SMP):

- In subsection (B), the time within which an intentionally abandoned *nonagricultural* nonconforming use or structure may maintain its nonconforming status is changed from 5 years to 12 months, the same timeframe in Title 20 (Zoning).
- In subsection (E), which allows nonconforming structures to be rebuilt if they’re destroyed by fire, explosion, flood, or other casualty, a new (1) is being added, stating that “intentional demolition or removal is not a casualty,” as in Title 23 (SMP). This means that one can’t intentionally destroy a nonconforming structure then be allowed to rebuild it.

## **Topic #12, Permitting**

**a) Consider simplifying utility repair and maintenance permitting.**

In §16.16.235 (Activities Allowed with Notification), though subsection (B)(2) already allows maintenance and repair of infrastructure (including utilities), it has been amended to be clearer by adding the term “utility corridors.” Additionally, a new subsection (B)(3) has been added regarding utility installation.

## **Topic #13, Public Access**

### **b) Add ADA standards consistent with federal statutes.**

In both §16.16.620 (Wetlands – Use and Modification) subsection (H) and §16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(1), text has been added to allow trails to exceed standard width requirements to meet ADA requirements. (Exhibit F)

### **c) Consider revising dimensions for stairs and walkways located within the shoreline or critical area buffers to accommodate public trails.**

In §16.16.325 (Landslide Hazard Areas – Use and Modification), a new subsection (A)(3) has been added to allow trails (meeting certain conditions) in landslide hazard areas. (Exhibit F)

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25 percent of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

### **d) Consider amending trail location standards to allow trails to be located closer than in the outer 50% of a critical area buffer.**

In §16.16.620 (Wetlands – Use and Modification), subsection (H) (Recreation) has been amended to allow public trails to include viewing platforms, and to be closer than the outer 25% of the buffer “when necessary to provide wetland educational opportunities or for public health and safety,” and to be wider than the standard widths when necessary to meet ADA requirements. Corresponding amendments have also been made to 16.16.720(G)(1) (Habitat Conservation Areas – Use and Modification) (Exhibit F).

## **Topic #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), which has been updated to stress limbing over removal of trees to provide view corridors (Exhibit F).

## **Topic #20, Wetland Buffers**

### **a) PDS will conduct a parallel process, convening a group of local wetland consultants, to consider revisions to the CAO regulations regarding wetland habitat function score break points, buffer widths, reduction, averaging to meet DOE guidelines, and having buffers based on habitat performance instead of static/standard buffers. If they complete this work in time, it can be incorporated into this update; otherwise it can follow.**

In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and the Building Industry Association of Whatcom County (BIAWC) then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008.

The project was brought before the Planning Commission on March 14, 2019. But there was confusion on staff's part as to what we actually *had* to do at that time and what impacts it would have on

development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update.

So at the Commission's direction, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms<sup>4</sup> provided analyses based on data from projects they had worked on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.<sup>5</sup>) Thus, farmers may benefit but developers/builders may not, as many of our lower quality wetlands are those typically found in agriculture fields, while our higher quality wetlands are more typically found in non-agricultural rural areas.

Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.

## **Other Amendments**

### **UGA Wetlands**

In 16.16.225 (General Regulations) staff is proposing to add subsection (B)(7), which would allow "alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area" when impacts are fully mitigated. This would allow the alteration of certain wetlands in Urban Growth Areas (UGAs) (in particular, Birch Bay) so as to encourage development of commercially zoned property. Commercial development in Birch Bay is challenging because so much of the remaining commercially zoned property contains small, isolated wetlands. Yet under the Growth Management Act we're required to encourage development within UGAs so development doesn't sprawl to less developed rural areas of the County.

### **Accessory Uses within the Shoreline**

The SMA identifies "preferred" uses in the shoreline as water-oriented uses and single-family residences. Other uses are not allowed. However, we know that folks that have waterfront property want and expect to have access for swimming, boating, relaxation, etc., and recreational amenities near the shore (e.g., fire pits, kayak sheds, etc.). But these uses would require the clearing of vegetation in what is considered a Habitat Conservation Area. So we have added to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (G)(4), which allows but sets limits on how much of the shoreline can be cleared of vegetation for such uses and requires mitigation to offset the impacts so as to achieve No Net Loss.

<sup>4</sup> NW Ecological Services, NW Wetlands Consulting, and Aqua-Terr Systems, Inc.

<sup>5</sup> Paired sample t-tests were conducted to compare the proposed buffer results with categories of the wetlands impacted.

### **Timber Removal within Habitat Conservation Areas**

The current Ch. 16.16 (Critical Areas) does not have guidance for Conversion Option Harvest Plans as allowed by WAC 222. For other permits this would allow for a limited removal of trees, while retaining larger trees to help with managing a riparian buffer. When development alters a functioning forested system some level of continued forest management is required (see 16.16.720(V)). To alleviate this issue, staff is proposing to add to 16.16.720 (Habitat Conservation Areas – Use and Modification) subsection (P), based on language borrowed from Skagit County. The section sets performance standards for removing timber in Habitat Conservation Areas (e.g., riparian areas) and would allow timber harvesting to occur within buffers while still retaining the HCA's functions. These standards vary by water type, and are tied to existing buffer conditions. This amendment is aimed at closing a loophole wherein applicants remove trees before applying for a development permit, which is when the CAO becomes applicable (except for Class IV Conversions, forest practices are not reviewable under the CAO).

### **Single-Family Residential Development on Constrained Lots**

Staff is proposing to redefine what and how **reasonable use exceptions and variances** are used and who decides them. Our Hearing Examiner has questioned our current schema, in particular why he isn't the final decision maker, as the current code allows an administrative determination to be made *after* a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions). Under the proposed schema we would use (in hierarchical order):

- **Administrative Reduction/Average** – Staff would have the ability to administratively reduce or average a buffer by 25% if the impacts can be fully mitigated, though avoidance and minimization criteria are applied. This allows for flexibility in project design and road alignments. If this doesn't work, then...
- **Administrative Variance** – Staff would have the ability to administratively grant an administrative variance<sup>6</sup> to reduce a buffer by 25-50% if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Variance** – The Hearing Examiner would have the ability to grant a variance from *any* dimensional standard by any degree if the impacts can be fully mitigated and the variance criteria are met. If this doesn't work, then...
- **Hearing Examiner Reasonable Use Exception** – The Hearing Examiner would have the ability to grant a Reasonable Use Exception to allow up to 2,500 square feet of impacts, and the homeowner would only have to mitigate what can actually fit on the property (which conceivably could be none).

In this schema, the degree to which one can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process.

However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). They would be limited to variances

<sup>6</sup> This mechanism was created by Council in 2020 and is found in WCC 22.05.024 (Variances).

for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall. Reasonable Use cases are becoming increasingly prevalent as smaller more critical area constrained parcels are developed and they are challenging for both applicants and PDS staff to process and still maintain the No Net Loss Standard. PDS believes these proposed amendments to the Reasonable Use process will result in improved permitting efficiencies and still maintain adequate ecosystem protections.

Note, too, that under the reasonable use rules, the Planning Commission is proposing to amend the maximum impact area to a range of “10% of the lot area or 2,500 square feet<sup>7</sup>, whichever is greater; provided that in no instance shall it exceed 4,000 square feet.” Since the property would not need to fully mitigate, a smaller footprint is warranted. This returns the reasonable use exception to truly the last effort of avoiding a taking.

<sup>7</sup> What it was prior to the 2017 Critical Areas update.

1

2

# Shoreline Management Program Update Proposed Amendments to WCC Chapter 16.16 Critical Areas Planning Commission Approved Draft



Planning and Development Services  
Whatcom County  
5/13/2021

## Chapter 16.16

### CRITICAL AREAS

#### Contents

Article 1. Purpose and Intent .....	5
16.16.100 Purpose and Intent. ....	5
Article 2. Administrative Provisions .....	7
16.16.200 Authority. ....	7
16.16.205 Authorizations Required. ....	8
16.16.210 Applicability and Severability .....	8
16.16.215 Relationship to Other Jurisdictions .....	8
16.16.220 Identification of Critical Areas. ....	9
16.16.225 General Regulations.....	10
16.16.230 Activities Allowed without Notification. ....	11
16.16.235 Activities Allowed with Notification. ....	12
16.16.250 Critical Areas Review Process. ....	18
16.16.255 Critical Areas Assessment Reports.....	20
16.16.260 General Mitigation Requirements. ....	22
16.16.261 Alternative Mitigation Plans. ....	27
16.16.262 Watershed-Based Management Plans. ....	28
16.16.263 Mitigation Banks. ....	29
16.16.264 In-Lieu Fees. ....	31
16.16.265 Critical Areas Protective Measures.....	32
16.16.270 Reasonable Use Exceptions. ....	34
16.16.273 Variances.....	38
16.16.275 Nonconforming Uses, Structures, and Lots. ....	38
16.16.280 Appeals.....	39
16.16.285 Penalties and Enforcement.....	39
16.16.295 Open Space and Conservation.....	40

1	Article 3. Geologically Hazardous Areas .....	41
2	16.16.300 Purpose. ....	41
3	16.16.310 Geologically Hazardous Areas – Designation, Mapping, and Classification. ....	41
4	16.16.320 Geologically Hazardous Areas – Protective Measures.....	45
5	16.16.322 Geologically Hazardous Areas – General Use or Modification. ....	47
6	16.16.325 Landslide Hazard Areas – Use and Modification. ....	47
7	16.16.340 Seismic Hazard Areas – Use and Modification. ....	49
8	16.16.345 Alluvial Fan Hazard Areas – Use and Modification. ....	50
9	16.16.350 Volcanic Hazard Areas – Use and Modification. ....	50
10	16.16.355 Erosion Hazard Areas – Use and Modification. ....	51
11	16.16.365 Tsunami Hazard Areas – Use and Modification. ....	53
12	16.16.367 Seiche and Landslide Generated Wave Hazard Areas – Use and Modification.....	53
13	16.16.370 Mine Hazard Areas – Use and Modification. ....	53
14	16.16.375 Geologically Hazardous Areas – Review and Reporting Requirements.....	53
15	Article 4. Frequently Flooded Areas .....	56
16	16.16.400 Purpose. ....	56
17	16.16.410 Frequently Flooded Areas – Designation and Mapping. ....	56
18	16.16.420 Frequently Flooded Areas – General Standards. ....	57
19	16.16.430 Frequently Flooded Areas – Review and Report Requirements.....	57
20	Article 5. Critical Aquifer Recharge Areas .....	59
21	16.16.500 Purpose. ....	59
22	16.16.510 Critical Aquifer Recharge Areas – Designation, Classification and Mapping. ....	59
23	16.16.520 Critical Aquifer Recharge Areas – General Standards.....	60
24	16.16.525 Critical Aquifer Recharge Areas – Use and Modification.....	60
25	16.16.530 Critical Aquifer Recharge Areas – Prohibited Uses. ....	61
26	16.16.535 Critical Aquifer Recharge Areas – Review and Report Requirements. ....	61
27	Article 5.5. Areas within the Rural Residential District of Lummi Island .....	63
28	16.16.540 Areas within the Rural Residential District of Lummi Island.....	63
29	16.16.541 Exempt Wells. ....	63
30	16.16.542 Minimum Well Spacing for all New Wells.....	63

1	16.16.543 Requirements for Public Water System Wells, Non-Group B Two Party Wells, and Non-	
2	Domestic Wells. ....	63
3	16.16.544 Administrative Waiver. ....	64
4	Article 6. Wetlands.....	65
5	16.16.600 Purpose. ....	65
6	16.16.610 Wetlands – Designation, Rating, and Mapping. ....	65
7	16.16.612 Exceptions to Regulation. ....	66
8	16.16.620 Wetlands – Use and Modification. ....	67
9	16.16.630 Wetland Buffers. ....	70
10	16.16.640 Wetland Buffer Modification. ....	71
11	16.16.670 Wetlands – Review and Reporting Requirements. ....	76
12	16.16.680 Wetlands – Mitigation Standards. ....	77
13	16.16.690 Wetland Mitigation Plan. ....	81
14	Article 7. Fish & Wildlife Habitat Conservation Areas (HCA) ....	83
15	16.16.700 Purpose. ....	83
16	16.16.710 Habitat Conservation Areas – Designation, Mapping, and Classification.....	83
17	16.16.720 Habitat Conservation Areas – Use and Modification.....	86
18	16.16.730 Habitat Conservation Area Buffers. ....	94
19	16.16.740 Habitat Conservation Area Buffer Modification. ....	96
20	16.16.750 Habitat Conservation Areas – Review and Reporting Requirements. ....	99
21	16.16.760 Habitat Conservation Areas – Mitigation Standards. ....	101
22	Article 8. Conservation Program on Agriculture Lands (CPAL) ....	104
23	16.16.800 Purpose. ....	104
24	16.16.810 Resource Concerns. ....	104
25	16.16.820 Classification and Applicability. ....	105
26	16.16.830 Conservation Farm Plans – General Standards.....	106
27	16.16.840 Conservation Farm Plan Requirements. ....	106
28	16.16.850 Preparation and Approval of Conservation Farm Plans.....	108
29	16.16.860 Monitoring and Compliance. ....	109
30	16.16.870 Limited Public Disclosure. ....	111

1	Article 9. Definitions .....	112
2	16.16.900 Definitions.....	112
3		
4	<b>Tables</b>	
5	Table 1. Standard Wetland Buffer Widths.....	71
6	Table 2. Compensatory Mitigation Ratios for Projects in Western Washington.....	80
7	Table 3. Performance-Based Riparian Standards* .....	93
8	Table 4. Buffer Requirements for HCAs .....	95
9	Table 5. Who May Prepare Conservation Farm Plans .....	109
10		

## Article 1. Purpose and Intent

### 16.16.100 Purpose and Intent.

- A. The purposes of this chapter ~~is~~are to ~~help achieve~~~~carry out~~ the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter [36.70A](#) RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.
- B. The Growth Management Act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. The Washington Department of Commerce has adopted minimum guidelines in Chapter [365-190](#)WAC detailing the process involved in establishing a program to protect critical areas. "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety. Critical areas that must be protected include the following areas and ecosystems:
  - 1. Wetlands;
  - 2. Areas of critical recharging effect on aquifers used for potable water;
  - 3. Fish and wildlife habitat conservation areas;
  - 4. Frequently flooded areas; and
  - 5. Geologically hazardous areas.
- C. By regulating development and minimizing critical area alterations, this chapter seeks to:
  - 1. Reduce harm due to landslides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.
  - 2. Minimize unnecessary maintenance of public facilities, and costs associated with property damage, emergency rescue relief operations, and environmental degradation.
  - 3. Protect against adverse impacts to water quality and quantity resources.
  - 4. Alert appraisers, assessors, real estate agents, owners, potential buyers or lessees, and other members of the public to natural conditions that pose a hazard or otherwise limit development.
  - 5. Protect wetlands, floodplains, critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.
  - 6. Protect species listed as threatened or endangered and their habitats.
  - 7. Protect unique, fragile, and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats.
  - 8. Provide County officials with information to approve, condition, or deny project proposals.
  - 9. Protect property rights, while allowing for economic development, including agriculture, and allowing for the development and maintenance of adequate and appropriate public services and essential public facilities.

10. Prevent adverse and cumulative environmental impacts to critical areas and mitigate unavoidable impacts.
  11. Coordinate Whatcom County's critical areas protection activities and programs with those of other jurisdictions.
  12. Coordinate environmental reviews and permitting of proposals with other departments and agencies to avoid duplication and delay.
  13. Allow for reasonable use of property in accordance with the provisions of WCC [16.16.270](#).
  14. Establish critical areas protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.
- D. The goals, policies, and purposes set forth in this chapter serve as a basis for exercise of the County's substantive authority under the State Environmental Policy Act (SEPA) and the County's SEPA rules.
  - E. The County's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.
  - F. Nothing in this chapter is intended to preclude or discourage beneficial actions that protect, restore, and/or maintain critical areas or minimize risks associated with critical areas.
  - G. Consistent with Whatcom County's high standard of staff conduct, County staff ~~shall~~ observe all applicable, County, state, and federal ~~and Washington~~ laws regarding entry onto privately owned property.

## Article 2. Administrative Provisions

### 16.16.200 Authority.

- A. This chapter is adopted under the authority of Chapter [36.70](#) RCW, which empowers a county to enact a critical area ordinance and provide for its administration, enforcement and amendment, and Chapter [36.70A](#) RCW and Article 11 of the Washington State Constitution.
- B. [The Director shall administer and enforce the provisions of this chapter and have the responsibility for reviewing development proposals for compliance with this chapter. Additionally, s/he shall also have the:](#)
- [1. Authority to approve, deny, or condition permits in accordance with the standards set forth herein.](#)
  - [2. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC 16.16.220\(C\) \(Interdisciplinary Team\).](#)
  - [3. Authority to post a stop work order pursuant to WCC 16.16.285 upon a person undertaking activity within a critical area or buffer in violation of this chapter.](#)
  - [4. Any additional responsibility and/or authority specifically provided for in this chapter.](#)
  - [5. For project permits subject to consolidated review the Director's authority shall transfer to another County decision maker when another decision maker is specified for a separate project permit. In such cases, the Director shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision maker as to how the provisions of this chapter apply to the permit action, including project permits.](#)
- C. [The Whatcom County Hearing Examiner authority is provided in is hereby vested with responsibility and authority to perform the following duties:](#)
- [1. Those duties as assigned in WCC Chapter 2.11 \(Hearing Examiner\).](#)
  - [2. Those duties as assigned in WCC Title 22 \(Land Use and Development\)](#)
  - [3. To grant or deny variances to the standards of this Chapter pursuant to WCC 16.16.275 \(Variances\).](#)
  - [4. To grant, condition, or deny reasonable use exception permits for all developments affecting critical areas pursuant to WCC 16.16.270 \(Reasonable Use Exceptions\).](#)
  - [5. To decide on appeals of administrative decisions issued by the Director.](#)
- D. [In granting, revising, or extending a permit, the Director, or Hearing Examiner as applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The Director and/or Hearing Examiner shall render a final decision in accordance with the timelines established in WCC Chapter 22.05, as applicable. All decisions of the Director and Hearing Examiner may be appealed pursuant to WCC 22.05.160.](#)

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Comment [CES1]: Moved from 16.16.240, which has been deleted.

#### 16.16.205 Authorizations Required.

- A. No action shall be taken by any person, ~~company, agency, governmental body (including Whatcom County), applicant, owner, or owner's agent, which~~ that results in any alteration of a critical area or its setback or buffer without prior authorization by submitting an application ~~to the technical administrator on a form provided by Whatcom County~~ and obtaining either the required permit or an approval of a notice of activity, as specified herein.
- B. No land use ~~development project~~ permit, construction permit, or land division approval required by County ordinance shall be granted until the County decision maker has determined that the applicant has complied with the applicable purposes, requirements, objectives, and goals of this chapter including the mitigation standards set forth in WCC [16.16.260](#).
- C. Project permits shall comply with all provisions of this chapter, WCC Title [22](#) and the department's administrative manual.
- D. The requirements of this chapter shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (RCW Chapter [43.21C](#) ), as locally adopted (WCC Chapter [16.08](#)). Any conditions required pursuant to this chapter shall be coordinated with the SEPA review and threshold determination.
- E. Areas characterized by a particular critical area may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. When one critical area adjoins or overlaps another, the more restrictive standards shall apply.

Comment [CES2]: Definition of person now covers these.

#### 16.16.210 Applicability and Severability.

This chapter shall be consistently applied to any alteration or development within geographical areas of unincorporated Whatcom County that meets the definition and criteria for critical areas and critical area buffers or setbacks as set forth in this chapter. No development shall be constructed, located, extended, modified, converted or altered, or land subdivided without full compliance with this chapter. Should any section or provision of this chapter be declared invalid, such decision shall not affect the validity of this chapter as a whole.

#### 16.16.215 Relationship to Other Jurisdictions.

- A. Permit applicants are responsible for complying with all federal, state, tribal, and local regulations that may pertain to a proposed development. Compliance with the provisions of this chapter does not necessarily constitute compliance with other regulations and permit requirements.
- B. In cases where other agencies have jurisdiction over critical areas and the ~~technical administrator~~ Director determines that the permit conditions imposed by such agencies are no less protective and satisfy the requirements of this chapter, those permit conditions may be substituted as the conditions of approval for the requirements of this chapter. Such agencies may include, but are not limited to, the Lummi Nation; the Nooksack Tribe; the United States Army Corps of Engineers; the United States Environmental Protection Agency; the United States Fish and Wildlife Service; the National Marine Fisheries Service or NOAA Fisheries; and the Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife.
- C. The County shall make detailed written findings required by WCC Chapter [22.05](#) and WCC [16.16.250](#) when adopting conditions of another jurisdiction's permit. Such requirements shall

be a condition of critical area approval and enforceable by the County. In the event that there is a conflict between permit requirements and the standards of this chapter, the more restrictive standards shall apply.

- D. The County shall notify the applicant in writing when adopting other agencies' conditions pursuant to this section.

**16.16.220 Identification and mapping of Critical Areas.**

- A. **Critical Area Maps.** The County has identified critical areas and areas where the conditions under which critical areas typically occur and/or have the potential to occur. The approximate location and extent of critical areas within the County's jurisdiction are shown on maps; ~~however, this information is for increasing public awareness of critical areas. These "static" maps maybe too inexact for regulatory purposes. These maps which~~ shall be available at the Department of Planning and Development Services ~~department~~ and online for public inspection.

1. Property owners, the ~~technical administrator~~ Director, and/or members of the public may use these maps as a general guide, but the maps do not provide a comprehensive accounting of areas subject to this chapter nor do they provide a definitive critical areas designation. ~~Maps showing known critical areas are only for information or illustrative purposes. Critical area locations and boundaries shown on the County's maps are approximate and do not include buffers that may be associated with critical areas, and some critical areas may not be shown on the maps at all. It is also possible that some maps showing critical areas in certain areas may not be accurate.~~

2. Planning and Development Services has the authority to update critical areas maps and shall do so as new critical areas are identified and as new information becomes available.

3. ~~The approximate location and extent of frequently flooded areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as new hazard areas are identified and as new information becomes available. This article does not imply that land outside mapped frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance and Mitigation Administration (FIMA), for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.~~

- B. **Identification.** ~~Field investigation, analysis by a qualified professional, and/or consideration of other sources of credible scientific information may be required to confirm the presence or absence of a critical area and its boundaries and buffers. When County critical area maps, indicators, or other sources of credible information indicate that a site may be located in, contain, or abut critical areas or their buffers or setbacks, the Director shall require technical studies in accordance with the requirements for that critical area specified herein to determine the extent of critical areas on the property.~~

Comment [CES3]: Moved from 16.16.410

Comment [CES4]: Moved to 16.16.250 (Review Process)

Comment [CES5]: Moved from 16.16.250

C. **Interdisciplinary Team.** The **Director** may call upon outside expertise including an interdisciplinary team if s/he determines that additional technical assistance is required to assess a critical areas development proposal or ensure the application of best available science.

1. The **Director** will coordinate this effort and seek advice from the team.
2. The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field, and/or independent qualified professionals with expertise relating to the critical area issue.
3. The functions of the interdisciplinary team are to field check and verify critical area determinations/boundaries and assess species/habitat presence by providing written peer review of the in-formation included with an application, identify areas of concern in the application of best available science, provide professional opinions and recommendations relevant to the provisions of this chapter, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.
4. In lieu of convening an interdisciplinary team, the County may require third-party review by a qualified professional for any development proposal, mitigation plan, mitigation bank proposal, or other project for which additional technical expertise is needed. The cost of the third-party review shall be the permit applicant's responsibility.

~~C.A. Planning and Development Services has the authority to update critical areas maps and shall do so as new critical areas are identified and as new information becomes available.~~

#### **16.16.225 Regulated activitiesGeneral Regulations.**

- A. The following activities shall be subject to the provisions of this chapter when they occur within critical areas or their buffers or will impair the functions and values of a critical area:
1. Clearing, grading, dumping, excavating, discharging, or filling with any material. This includes creating impervious surfaces.
  2. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure, subject to the provisions for a nonconforming structure pursuant to WCC 16.16.275, Chapter 20.83 WCC, and WCC 23.50.070.
  3. Any other activity for which a county permit is required, excluding permits for interior remodeling.
- A. General regulations apply to all critical areas and critical area buffers. Specific critical area articles describe standards applied to authorized alterations.
- B. Alteration of critical areas and/or buffers is prohibited except when **any impacts are mitigated pursuant to this Chapter, and:**
1. Alteration is approved pursuant to the reasonable use or variance provisions of WCC 16.16.270 and 16.16.273, respectively; or
  2. Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or

**Comment [RE6]:** Deleted, as it is redundant with 16.16.235(A)

3. Alteration is necessary to accommodate an approved water-dependent use and ~~any~~ associated development, ~~use, or /activity and/or the development activities~~ listed in WCC Title ~~23.90.130(B)(7)(a)~~ when permitted in accordance with the Whatcom County Shoreline Management Program (SMP); provided, that such development is operated, located, designed and constructed to minimize and, where possible, avoid critical areas disturbance to the maximum extent feasible; or
4. Alteration is part of an essential element of an activity allowed by this chapter and all feasible measures to avoid and minimize impacts have been employed. Such feasible measures shall include, but not be limited to, clustering where permitted by zoning and as appropriate to protect critical areas. The purposes of clustering shall be to minimize adverse effects of development on critical area functions and values, minimize land clearing, maintain soil stability, preserve native vegetation, provide for wildlife corridors, maintain hydrology, and mitigate risk to life and property; or
- ~~5. Alteration is associated with an exempt activity under WCC 16.16.230, or is allowed pursuant to the notification provisions of WCC 16.16.235, or is allowed pursuant to the specific regulatory standards for each designated critical area, as enumerated in the subsequent articles of this chapter; or~~
- ~~6.5. Alteration is associated with an alternative mitigation plan or watershed-based management plan approved pursuant to WCC 16.16.261 or 16.16.262, respectively; or~~
- ~~6. Alteration is associated with a conservation farm plan pursuant to Article 8 of this chapter; or~~
- ~~7. Alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area; or~~
- ~~8. Alteration of a shoreline habitat conservation area buffers as allowed by Title 23 (Shoreline Management Program).~~
- C. ~~Development proposals shall seek to maintain ecological connectivity and habitat corridors whenever possible. Restoration of ecological connectivity and habitat corridors shall be considered a priority restoration and mitigation action.~~
- D. ~~In order to preserve native plant communities within shoreline jurisdiction and/or critical areas and their buffers, associated with marine, river, or lake shorelines and wetlands, mitigation sequencing shall be applied during site planning for uses and activities so that the design and location of the structure or development minimizes native vegetation removal. Development, uses, or activities that require vegetation clearing shall be designed to avoid the following, in order of preference:~~
  1. ~~Native trees;~~
  2. ~~Other native vegetation;~~
  3. ~~Nonnative trees; and~~
  4. ~~Other nonnative vegetation.~~

**16.16.230 Exempt Activities Allowed without Notification.**

~~The following activities do not require authorization from Whatcom County. However, Exemptions from permit requirements of this chapter shall not be construed deemed to grant authorization for any work~~

**Comment [CES7]:** Already addressed by (4)

**Comment [CES8]:** Policy change: This would allow "alteration of Type III or IV wetlands that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area" when impacts are mitigated. This would allow the alteration of certain wetlands in Urban Growth Areas (UGAs) (in particular, Birch Bay) so as to encourage development of commercially zoned property. Commercial development in Birch Bay has been stifled because so much of the remaining commercially zoned property contains small, isolated wetlands. Yet under the Growth Management Act we're supposed to encourage development within UGAs so that development doesn't sprawl to less developed areas of the County.

**Comment [CES9]:** Policy change: This would allow modification of shoreline buffers pursuant to the new system being proposed in the SMP update.

**Comment [AP10]:** Added per SMP Scoping Document, Item #8b.

**Comment [P/C11]:** P/C moved to amend. Passed 7-0

**Comment [CES12]:** To provide clear guidance on order of preference in what vegetation should be avoided when clearing in shorelines.

to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction. ~~The following activities as specified are exempt from the requirements of this chapter:~~

- A. Class I, II, III, and IV special (not Class IV general) forest practices conducted in accordance with the applicable standards of the Washington State Forest Practices rules, WAC Title [222](#), except where the lands have been or are proposed to be converted to a use other than commercial forest product production.
- B. Maintenance of lawfully established vegetation, landscaping, and gardens within a regulated critical area or its buffer, ~~including, but not limited to, cutting, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species (excluding trees)~~ to maintain the general condition and extent of such areas; provided, that native growth protection areas, or other areas protected via conservation easements or similar restrictive covenants are not covered by this exception.
- C. Maintenance activities necessary to implement approved mitigation plans.
- D. Low impact activities, when the activity does not cause adverse impacts, such as hiking, canoeing, viewing, nature study, photography, hunting, fishing, education, or scientific research.
- E. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act ~~(such as the Swift Creek Sediment Management Action Plan)~~, or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.
- F. Maintenance and/or repair of lawfully established single-family residences and appurtenant features; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance activity shall not result in increased risk to life or property.
- G. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction and/or that meet the criteria of RCW [77.55.181](#)(1) and that are reviewed and approved according to the provisions of RCW [77.55.181](#).

Comment [P/C13]: P/C moved to delete.  
Carries 7-0-0-2

#### **16.16.235 Activities Allowed with Notification.**

- A. The activities specified in subsection B of this section are authorized within critical areas and buffers; provided, that:
  1. The applicant provides a written notification to the ~~technical administrator~~ Director on a form provided by the Department. Activities within the shoreline jurisdiction (WCC 23.20.010) shall require a shoreline permit or statement of exception.
  2. The notification will provide a site plan (in a common scale), photos, and specific information describing the activity and the mitigation to be implemented, if required ~~by the technical administrator~~, to document that the activity will not result in increased risk to public health,

safety, and welfare; that adverse impacts to critical areas are minimized; and that disturbed areas are restored as soon as possible following the activity.

3. Notification shall be submitted ~~to the technical administrator~~ at least 10 full business days prior to initiating work.
4. Upon receipt of the notification, the ~~technical administrator~~ Director shall issue a decision within 10 days unless additional information is required from the applicant or other review processes necessitate additional time. Additionally, the ~~technical administrator~~ Director may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the activities listed in subsection B of this section.
5. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process.

B. Activities Allowed with Notification.

1. **Emergency construction or activity** necessary for the immediate preservation of the public health, safety, and welfare as determined by the ~~technical administrator~~ Director; provided, that:
  - a. An emergency is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time period too short to allow full compliance with this chapter.
  - b. Emergency construction does not include development of new permanent protective structures where none previously existed. Where the ~~technical administrator~~ Director determines that new protective structures are the appropriate means to address an emergency situation, the project proponent shall either obtain any permits that would have been required absent an emergency, pursuant to Chapter [90.58](#) RCW, Chapter [173-27](#) WAC, or this chapter, or remove the structure upon abatement of the emergency situation.
  - c. Within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title [23](#)), all emergency construction shall be consistent with the policies and procedural requirements of WCC Title [23](#) and this chapter.
  - d. The applicant shall make a reasonable attempt to contact the ~~technical administrator~~ Director prior to activity; provided, that when prior notice is not feasible, notification of the action shall be submitted to the ~~technical administrator~~ Director as soon as the emergency is addressed and no later than 14 days following such action.
2. **Maintenance, ~~operation, and/or repair of~~ existing infrastructure improvements**, including dikes and drainage ditches, rights-of-way, trails, roads, fences, and utilities ~~or utility corridors~~; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance ~~or repair~~ activity shall not result in increased risk to life or property. Maintenance ~~or repair~~ shall be allowed pursuant to the provisions set forth in this chapter; provided, that:

- a. The applicant shall submit to the ~~technical administrator~~ Director a written description of the maintenance activity with all of the following general information:
  - i. Type, timing, frequency, and sequence of maintenance activity to be conducted;
  - ii. Type of equipment to be used (hand or mechanical);
  - iii. Manner in which the equipment will be used; and
  - iv. Best management practices to be used.
- b. The applicant's written description shall be valid for up to five years; provided, that there is no significant change in the type or extent of maintenance activity.

3. **Utility Installation.** Construction of electrical, telecommunications, cable, water, sewer, and other utility lines and equipment within existing structures, facilities, infrastructure systems, development areas and uses, utility easements, and public and private rights-of-way, provided:
  - a. There is no further intrusion into geologically hazardous areas, frequently flooded areas, wetlands, or fish and wildlife habitat conservation areas or their buffers;
  - b. Soil erosion is controlled;
  - c. Disturbed areas are promptly stabilized; and
  - d. Any adverse impacts to critical areas are mitigated in accordance with this chapter.

**Comment [CES14]:** Added to address Scoping Document item #12a.

- ~~3.4~~ **Select Removal or Pruning of Vegetation Management.** No vegetation shall be removed from a wetland, habitat conservation area, coastal or riverine erosion hazard area, or landslide hazard area, or their buffers, unless specifically listed in subsection (a) and meeting the conditions of subsection (b), below subject to the following:

- a. Exceptions. ~~Vegetation removal or pruning will be done in a manner that minimizes disturbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality, or water quantity.~~
  - i. Except for ~~lawn~~, pasture, ornamental vegetation, and similar introduced vegetation, provided all areas of vegetation removal are revegetated~~no vegetation shall be removed from a wetland, habitat conservation area, coastal or riverine erosion hazard area, or landslide hazard area or their buffers unless otherwise authorized by the technical administrator for safety reasons.~~
  - ii. Restoration projects.
  - iii. Maintenance of legally established views so long as the criteria subsection (B)(6) of this section are met.
  - ~~i-iv.~~ The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional.
  - v. To improve overall slope or bank stability selective vegetation limbing, clearing, and/or thinning may be allowed in landslide hazard areas and/or riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved habitat management plan designed. The plan shall be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical engineer.

b. Conditions.

i. Vegetation removal or pruning will be done in a manner that minimizes disturbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality, or water quantity. Shrubs shall not be pruned to a height of less than 6 feet.

ii. Cut vegetation shall be left within the critical area or buffer where practicable unless removal is warranted due to the presence of an established disease infestation, noxious weeds, environmental or other hazards, or because of access or maintenance needs if the area is a utility or access right-of-way.

iii. All limb removal, crown thinning, or pruning shall meet the American National Standard Institute (ANSI) tree pruning standards. Pruning shall retain branches that overhang the water. No tree topping shall occur. In no circumstance shall removal of more than one-fourth (1/4) of the original crown be permitted within a three year period.

iv. Hazard Tree Mitigation.

(A) The landowner shall replace any trees that are removed at a three to one ratio (3:1). When approved by the Director, a landowner may choose to convert a hazard tree proposed for removal to a wildlife snag as an alternative if recommended by a certified arborist.

(B) In addition to the requirements of WCC 20.80.300 through 20.80.380 (Landscaping), replacement trees shall meet the following criteria:

(1) Replacement trees shall be exclusively species native to the coastal region of the Pacific Northwest.

(2) At a minimum, 50% of replacement trees shall be evergreen species. If only one replacement tree is required, it shall be an evergreen species, unless otherwise approved by the Director.

4. ~~The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional.~~

5. **View Corridors.** Clearing and/or thinning for limited view corridors shall be allowed. Except in landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, the clearing, pruning, and revegetation of buffer areas for view purposes where it does not adversely impact ecological and/or aesthetic values, and/or slope stability, provided:

a. The proposed view corridor is not located in a landslide, riverine, or coastal erosion hazard areas hazard areas or their buffers.

b. Clearing shall only be allowed when the applicant can demonstrate that a limited view corridor cannot be achieved through limb removal, crown thinning, or pruning. With clearing, a combination such strategies may be required to establish a view shall be required.

a-c. A window or view opening is limited to the minimum necessary for view purposes and shall not exceed a cumulative total of 15% percent of buffer length, unless the applicant can demonstrate to the technical administrator's satisfaction that a larger dimension is warranted because of slope or other site considerations. Trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed/thinned or

**Comment [AP15]:** This language is modeled after Tree Replacement Requirements for Lake Whatcom.

**Comment [CES16]:** New text added per Scoping Document, Item #18a.

- ~~pruned.~~ Whenever possible, view corridors shall be located in areas dominated with non-native vegetation and invasive species.
- ~~b-d.~~ Significant trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed/thinned or pruned.
- ~~c-e.~~ Low-growing native vegetation shall be retained and/or planted in the view corridor to provide habitat, stabilize the area, and achieve dense growth.
- ~~d.~~ This activity shall not be conducted more than once every 10 years for any individual residential property.
- ~~e-f.~~ Clearing shall not take place where increased risks or adverse impacts, including cumulative impacts, to critical area functions and values are likely to occur.
- ~~f-g.~~ This provision does not apply to open space set aside in a subdivision or other approval to which specific conditions are attached that prohibit clearing of vegetation without a written approval or permit.
- ~~g-h.~~ View areas established under this section shall be considered lawfully established and may be maintained as provided for in subsection (B)(~~34~~) of this section.
6. **Navigation Aids.** The installation of navigation aids and boundary markers in accordance with applicable state and federal laws or the installation of mooring buoys in accordance with the Department of Fish and Wildlife design guidelines and the Whatcom County Shoreline Management Program (WCC Title [23](#)).
  7. **Site investigation.** Routine site investigation work in wetlands, landslide hazard areas, and riverine and coastal erosion hazard areas. This includes geotechnical soil borings, groundwater monitoring wells, percolation tests, sediment sampling, and similar or related activities required for land use application submittals or permit compliance. Land survey and shallow soil test pits dug in conjunction with wetland delineation studies do not require notification.
  8. **Household Garden Products.** ~~f~~Fertilizers or ~~household~~ herbicides to address noxious weed infestation may be used in critical area buffers, but not in critical areas. Either must be applied at times and rates specified on the label in accordance with Washington State Department of Agriculture and other applicable regulations.
  9. **Ditch Maintenance.** ~~Routine maintenance of ditches on~~ agricultural lands maintenance of ditches is allowed; provided, that all of the following are met:
    - a. The maintenance is necessary to support ongoing agricultural operations;
    - b. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions;
    - c. The agricultural activities are conducted pursuant to an approved conservation farm plan prepared pursuant to Article 8 of this chapter;
    - d. The farm operator obtains a hydraulic project approval (HPA), if required, from the Washington State Department of Fish and Wildlife (WDFW) prior to the maintenance activity; and
    - e. The farm operator provides a copy of the HPA to the ~~technical administrator~~ Director as part of the written notification.
  10. Alteration or removal of beaver-built structures two years old or less; provided, that:

- a. There is no adverse impact to wetland or river or stream functions.
- b. The property owner obtains an HPA from WDFW (if required) prior to the maintenance activity.
- c. The property owner provides a copy of the HPA to the ~~technical administrator~~ Director as part of the written notification.

**16.16.240 Technical administrator and hearing examiner authority,**

The technical administrator is the Whatcom County director of planning and development services or his/her designee. The hearing examiner is appointed by the county council. The technical administrator and the county hearing examiner shall administer and enforce the provisions of this chapter pursuant to the following:

- A. The technical administrator shall have the primary responsibility for reviewing development proposals for compliance with this chapter and is authorized to approve, deny, or condition permits in accordance with the standards set forth herein. The technical administrator shall also have the following authority:
  - 1. Authority to convene an interdisciplinary team to assist in reviewing development proposals or to solicit review from outside experts in accordance with WCC ~~16.16.245~~.
  - 2. Authority to grant, condition, or deny reasonable use permits for single-family residential building permits within critical areas and/or their buffers.
  - 3. Authority to grant, condition, or deny reasonable use permits for other development proposals that would affect critical area buffers, but not the critical areas themselves.
  - 4. Authority to serve a cease and desist order pursuant to WCC ~~16.16.285~~ upon a person undertaking activity within a critical area or buffer in violation of this chapter.
  - 5. Any additional responsibility and/or authority specifically provided for in the subsequent articles of this chapter.
- B. The technical administrator's authority shall transfer to another county decision maker when another decision maker is specified for a separate project permit. In such cases, the technical administrator shall ensure that all procedural requirements of this chapter are met and shall make a recommendation to the designated decision maker as to how the provisions of this chapter apply to the permit action, including project permits.
- C. The Whatcom County hearing examiner is hereby vested with responsibility and authority to hear appeals and perform the following duties:
  - 1. Authority to grant or deny variances.
  - 2. Authority to grant, condition, or deny reasonable use permits for all developments, except single-family building permits, affecting critical areas.
  - 3. Authority to decide on appeals of administrative decisions including, but not limited to, reasonable use permits issued by the technical administrator.
  - 4. Authority to hold public hearings pursuant to Chapter 22.05 WCC.
- D.A. In granting, revising, or extending a permit, the technical administrator, or hearing examiner as applicable, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the

Comment [RE17]: Moved to 16.16.200 (Authority)

development is consistent with criteria set forth in this chapter. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with this chapter. The technical administrator and/or hearing examiner shall render a final decision in accordance with the timelines established in Chapter 22.05 WCC, as applicable. All decisions of the technical administrator and hearing examiner may be appealed pursuant to WCC 22.05.160.

#### **16.16.245 Interdisciplinary team.**

The technical administrator may call upon outside expertise including an interdisciplinary team if the technical administrator determines that additional technical assistance is required to assess a critical areas development proposal or ensure the application of best available science.

- A. The interdisciplinary team shall include the applicant and/or their technical representative, local, state, or federal agency or tribal representatives with expertise in the field, and/or independent qualified professionals with expertise relating to the critical area issue.
- B. The functions of the interdisciplinary team are to field check and verify critical area determinations/boundaries and assess species/habitat presence by providing written peer review of the information included with an application, identify areas of concern in the application of best available science, provide professional opinions and recommendations relevant to the provisions of this chapter, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.
- C. The technical administrator will coordinate this effort and seek advice from the team.
- D. In lieu of convening an interdisciplinary team, the county may require third party review by a qualified professional for any development proposal, mitigation plan, mitigation bank proposal, or other project for which additional technical expertise is needed. The cost of the third party review shall be the permit applicant's responsibility.

**Comment [RE18]:** Moved to 16.16.220(C) (Interdisciplinary Team)

#### **16.16.250 Submittal requirements and Critical Areas Review Process.**

- A. All applicants shall complete a prescreening meeting with the ~~technical administrator~~ Director prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the requirements for a complete application; the critical area standards and procedures; to review conceptual site plans prepared by the applicant; to discuss appropriate investigative techniques and methods; and to determine reporting requirements.
- B. Review and approval of a proposed development within a critical area or its buffer may be initiated through the application for any project permit in Whatcom County on department-approved forms and containing the materials listed in the department's Administrative Manual.
- C. The ~~technical administrator~~ Director shall be responsible, in a timely manner, to make one of the following determinations regarding critical areas review:

- 1. ~~Initial Determination. When county critical area maps or other sources of credible information indicate that a site may be located, contain or abut critical areas, critical area buffers or setbacks~~

**Comment [CES19]:** Moved to 16.16.220

~~the technical administrator shall require technical studies in accordance with that critical area's specific article.~~

~~2-1~~ **Determination of Impacts.** The ~~technical administrator~~ **Director** shall use best available science, including but not limited to the County's critical areas maps, his/her field investigation results, his/her own knowledge of the site, information from appropriate resource agencies, or documentation from a scientific or other credible source to determine if the project will more probably than not adversely impact a critical area or its buffer. Identified adverse impacts shall be fully mitigated in accordance with WCC [16.16.260](#).

~~3-2~~ **Determination of Compliance.** If the applicant demonstrates to the satisfaction of the ~~technical administrator~~ **Director** that the project meets the provisions of this chapter and is not likely to adversely affect the functions and values of critical areas or buffers or provides mitigation to reduce the adverse impact to meet no net loss of the function and values of critical areas or buffers, the ~~technical administrator~~ **Director** shall make the determination that the proposal complies with this chapter.

~~4-3~~ **Decision to Approve, Condition, or Deny.** The ~~technical administrator~~ **Director** shall review all pertinent information pertaining to the proposed development and shall approve, approve with conditions, or deny the permit based on their review, and shall provide a detailed written decision. This determination shall be included in the project review record for the project permit in accordance with WCC Chapter [22.05](#).

D. The ~~technical administrator~~ **Director** may waive the requirement for critical areas review under this chapter when s/he determines that all of the following conditions are met:

1. The proposed development activity is located on a parcel that received approval of a previous critical areas review within the prior five years, site conditions have not changed, and the applicable regulations have not substantively changed;
2. All critical areas ~~within 300 feet of the new proposed development, use, or activity on the parcel~~ have been identified and delineated and the effects of the pro-posed development activity have been thoroughly considered in accordance with the most current regulations and best available science;
3. The activity is in compliance with all permit conditions including mitigating measures, as applicable, that were imposed as part of the prior review and there are no outstanding violations of conditions that were imposed as part of the previous review;
4. The development activity involves a use that is equally or less intensive than the development activity that was subject to the prior permit. Land use intensity shall be based on factors including development density, critical areas impacts, impervious surface, noise, glare, dust, hours of operation, and traffic.

~~E. Submittal Materials:~~

~~1. Complete application.~~

~~2. A detailed site map drawn to a common scale, or survey, showing at least the following:~~

~~a. Vicinity map.~~

~~b. Topographic, hydrologic, and vegetative features.~~

~~c. The location and description of known wildlife and habitat features and all known critical areas.~~

~~d. Proposed development activity with dimensions.~~

~~3. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc. Structures shall be dimensioned.~~

~~F. Elements of a critical area assessment are encouraged to be submitted together for timely review. However, the technical administrator may allow the various components to be submitted independently at different phases of a project if s/he determines piecemeal review will benefit the review process or at the request of the applicant.~~

**Comment [CES20]:** Deleted because we're moving away from the code listing everything needed in an application and just referring PDS's admin manual, which is referenced in subsection (B) now.

**Comment [CES21]:** Moved to 16.16.255

#### 16.16.255 Critical Areas Assessment Reports.

A. When the ~~technical administrator~~ Director determines a need for a critical area assessment pursuant to WCC 16.16.250, s/he shall have the authority to require a critical areas assessment report, to be prepared by a qualified professional and be consistent with best available science. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. A critical area assessment shall have all of the following elements, unless determined by the ~~technical administrator~~ Director not to be needed:

1. The requirements found in subsections ~~B-(C)~~ and ~~H-(I)~~ of this section;
2. Geological hazard assessment;
3. Critical aquifer recharge assessment;
4. Frequently flooded area assessment;
5. Wetland assessment;
6. Fish and wildlife habitat conservation area assessment;
7. A mitigation plan addressing all mitigation requirements of this title.

8. Habitat Management Plan, when required by this chapter or Title 23.

~~B. Elements of a critical area assessment are encouraged to be submitted together for timely review. However, at the request of the applicant the Director may allow the various components to be submitted independently at different phases of a project if s/he determines piecemeal review is reasonable and will benefit the review process.~~

**Comment [CES22]:** Moved from 16.16.250

~~B-C.~~ The critical areas assessment report shall:

1. Demonstrate that the submitted proposal is consistent with the purposes and specific standards of this chapter;
2. Describe all relevant aspects of the development proposal and critical areas adversely affected by the proposal including any geological hazards and risks associated with the proposal, and assess impacts on the critical area from activities and uses proposed; and

~~3. Identify impacts of the proposed use/development on habitat corridors, ecological connectivity, and habitat for salmon and forage fish as identified in WCC 16.16.710.~~

~~3-4.~~ Where impacts are unavoidable, demonstrate through an alternatives analysis that no other feasible alternative exists. Such an analysis shall explore alternatives that might pose fewer impacts or better protect ecological functions, and address such issues as project design,

**Comment [CES23]:** Added per SMP Scoping Document, Items #8b and 8c.

**Comment [P/C24]:** P/C moved to approve. Passed 7-0

location on the property, and type and location of mitigation, as applicable to the proposed development.

- 4.5. Identify and evaluate the cumulative impacts of individual development proposals to assure that no net loss standards are achieved. ~~Consider the cumulative impacts of the proposed action that includes past, present, and reasonably foreseeable future actions to facilitate the goal of no net loss of critical areas.~~ Such impacts shall include those to wildlife, habitat, and migration corridors; water quality and quantity; and other watershed processes that relate to critical area condition, process, and/or service.

5-6. Identify proposed mitigation and protective measures as required by this chapter.

- ~~C.D.~~ The ~~technical administrator~~ Director shall review the critical areas assessment report for completeness and accuracy and shall consider the recommendations and conclusions of the critical areas assessment report to assist in making administrative decisions concerning approval, conditional approval, or denial of the subject project and to resolve issues concerning critical areas jurisdiction and appropriate mitigation and protective measures.

E. The ~~Director~~ shall reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when s/he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.

- ~~D.F.~~ Critical areas assessment reports shall generally be valid for a period of five years from the date the assessment is approved by the ~~technical administrator~~ Director. Future land use applications may require preparation of new or supplemental critical area assessment reports unless it can be demonstrated to the satisfaction of the ~~technical administrator~~ Director that the previously prepared report is adequate for current analysis. The ~~technical administrator~~ Director may also require the preparation of a new critical area assessment report or a supplemental report when new information is found demonstrating that the initial assessment is in error. If the ~~technical administrator~~ Director requires more information in the report, s/he shall make the request in writing to the applicant stating what additional information is needed and why.

~~E.A. The technical administrator shall reject or request revision of the field and literature findings and conclusions reached in a critical areas assessment report when s/he can demonstrate that the assessment is inaccurate, incomplete, or does not fully address the critical areas impacts involved.~~

- ~~F.G.~~ To avoid duplication, the reporting requirements of this chapter shall be coordinated if more than one critical area assessment report is required for a site or development proposal. Similarly, where other agencies' assessments or reports are required pursuant to other state or federal laws, the applicant is encouraged to submit one report that satisfies all such agencies' requirements.

- ~~G.H.~~ In addition to a hard copy, applicants shall provide reports and maps to the County in an electronic format that allows site data to be incorporated into the County critical areas database; however, the County may waive the electronic format requirement for single-family building permits. Applicants shall follow Whatcom County electronic submittal guidelines. This requirement shall not be construed as a requirement to use specific computer software, though it must be in a format usable by the County.

- ~~H.I.~~ The intent of these provisions is to require a reasonable level of technical study and alternatives analysis pursuant to WCC [16.16.250](#) sufficient to assess potential project impacts and to protect

Comment [CES25]: Moved from 23.90.030  
30.010 Ecological Protection

critical areas. At a minimum, a critical areas assessment report shall include the following information:

1. A site plan showing the proposed development footprint and clearing limits, all relevant critical areas and buffers within and abutting the site, a written description of the project, an examination of project on-site design alternatives, and an explanation of why the proposed activity requires a location on, or access across, a critical area and why alternatives are not feasible;
2. A written description of the critical areas and buffers on or in the vicinity of the site, including their size, type, classification or rating, condition, disturbance history, and functions and values. Projects in frequently flooded areas must comply with the reporting requirements of WCC Title 17. Projects on or adjacent to geologically hazardous areas shall identify the type of hazard and assess the associated risks posed by the development or that the development may be subject to;
3. An analysis of potential adverse critical area impacts associated with the proposed activity including, but not limited to, effects related to clearing, grading, noise, light/glare, drilling, damming, draining, creating impervious surface, managing stormwater, releasing hazardous materials, and other alterations, and including an explanation of critical area processes and functions that may be affected;
4. An analysis of how critical area impacts or risks will be avoided and/or minimized, and/or an analysis of the proposed measures to prevent or minimize hazards. When impacts cannot be avoided, the report shall include a plan describing mitigation that will be provided to replace critical area functions and values altered as a result of the proposal. The mitigation plan shall be consistent with the provisions of WCC 16.16.260 and provide written documentation showing what the applicant considered for each step in the mitigation sequencing and the other applicable articles of this chapter;
5. The dates, names, signatures, and qualifications of the persons preparing the report and documentation of analysis methods including any fieldwork performed on the site; and
6. Additional reasonable information requested by the ~~technical administrator~~ Director for the assessment of critical areas impacts or otherwise required by the subsequent articles of this chapter.

#### 16.16.260 General Mitigation Requirements.

- A. ~~Developments permitted pursuant to this chapter~~ that adversely impacts or alters a critical area or buffer shall include mitigation sufficient to minimize risks associated with geologic hazards and/or ~~maintain~~ or replace or improve critical areas functions and values. Any proposed development that cannot adequately mitigate critical area impacts as determined by the ~~technical administrator~~ Director shall be denied.
- B. In determining the extent and type of mitigation required, the Director may consider all of the following:
  1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;

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2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
3. Observed or predicted trends regarding the gains or losses of specific habitats or species in the watershed, in light of natural and human processes;
4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

**Comment [CES26]:** Was repeated in several articles; moved to general mitigation regs.

C. Though in general on-site mitigation is preferred, the County shall not risk mitigation success or bypass opportunities for improving ecological processes in a watershed by precluding other mitigation options when it is more effective and sustainable. In order to provide the greatest ecological benefit, a combination of mitigation options may be used to achieve no net loss of ecological functions. In some cases it may be necessary to mitigate at multiple sites or on-site and out-of-kind. In determining the extent and type of mitigation required for impacts to critical areas, the Director may consider all of the following when applicable:

**Comment [CES27]:** Policy change. This would allow off-site mitigation when it's better for the environment and assists w/ developing an offsite buffer mitigation program.

1. On-site and in-kind. Unless otherwise approved by the Director, all critical areas impacts shall be compensated by creation or restoration of replacement areas that are in-kind, on-site, and of similar critical area category.
2. Off-site and in-kind. The Director may consider and approve off-site mitigation when the applicant demonstrates that greater biological and/or hydrological functions and values will be achieved. The mitigation may include restoration, creation, or enhancement of critical areas and/or their buffers. The process to determine the ratios of on-site mitigation shall apply to off-site ratios as well.
3. On-site and out-of-kind. The Director may consider and approve out-of-kind mitigation when the applicant demonstrates an ecological uplift of biological and/or hydrological functions and values will be achieved. The mitigation may include restoration, creation, or enhancement of other types of critical areas and/or their buffers. The process to determine the ratios of out-of-kind mitigation shall be based on a habitat management plan with a functional replacement assessment.
4. Alternative Mitigation Plans pursuant to 16.16.261 (Alternative Mitigation Plans)
5. Use of Mitigation Bank Credits, pursuant to 16.16.263 (Mitigation Banking)

D. Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas critical areas or their buffers. In all other cases, mitigation shall be completed concurrently with development as quickly as possible following disturbance and prior to use or occupancy of the activity or development.

E. Construction of mitigation projects shall be timed to reduce impacts; provided, that the Director may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).

**Comment [CES28]:** Moved from 16.16.760

**A.F. Mitigation Sequence.**

1. When an alteration or impact to a critical area or buffer is proposed, the applicant shall conduct an alternatives/mitigation sequencing analysis and demonstrate that all reasonable efforts have been taken to mitigate adverse impacts in the following prioritized order:
  - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - c. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
  - d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
  - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
2. Mitigation shall be provided for all unavoidable adverse alterations of a critical area or buffer. Mitigation for individual projects may include a sequenced combination of the above measures as needed to achieve the most effective protection, compensation for buffer functions and values, or mitigation for critical area functions and values.

**B.G. Mitigation Plan.**

1. A mitigation plan shall be developed in accordance with an approved critical areas assessment report and be consistent with best available science. Where appropriate, the mitigation plan should be compatible with watershed and recovery planning goals for Whatcom County. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.
2. The mitigation plan shall provide for construction, maintenance, monitoring, and contingencies as required by conditions of approval and consistent with the requirements of this chapter.
3. The mitigation plan shall demonstrate that all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts and results in no net loss of shoreline and critical area ecological functions.
- ~~3.4.~~ The mitigation plan shall be prepared by a qualified professional; provided, that the ~~technical administrator~~ Director may waive the requirement to hire a qualified professional to prepare a mitigation plan when the required mitigation involves standard planting or enhancement practices. The waiver shall not be granted for mitigation practices involving wetland creation, rehabilitation, and/or restoration.
- ~~4.5.~~ The mitigation plan shall contain the following information:
  - i. A description and scaled drawings of the activities proposed to reduce risks associated with geologic hazards and/or flooding, and/or to mitigate for impacts to critical area

**Comment [CES29]:** Moved from 23.90.030/30.010 Ecological Protection

functions and values. This shall include all clearing, grading/ excavation, drainage alterations, planting, invasive weed management, installation of habitat structures, construction sequencing, best management practices, site protection, irrigation, and other site treatments associated with the development activities.

- ii. Specific information on construction or the proposed mitigation activity including timing, sequence, equipment needs, best management practices, and responsible parties.
- iii. A description of the functions and values that the proposed mitigation area(s) shall provide, and/or a description of the level of hazard mitigation provided.
- iv. The goals, objectives, and performance standards that the proposed mitigation action(s) shall achieve or demonstrate consistency with.
- v. A description of how the mitigation area(s) will be evaluated and monitored to determine if the performance standards are being met.
- vi. A program and schedule for construction and post-construction performance monitoring of the mitigation project.
- vii. An evaluation of potential adverse impacts on adjacent property owners resulting from the proposed mitigation and measures to address such impacts. Mitigation projects shall not result in adverse impacts to adjacent property owners.
- viii. Identification of potential courses of action or contingencies, and any corrective measures to be taken if monitoring or evaluation indicates that project performance standards are not being met.
- ix. Plan sheets with scale identified, showing the edge of the critical area and buffer area. The affected critical area and buffer shall be clearly staked, flagged, and/or fenced prior to and during any site clearing and construction to ensure protection for the critical area and buffer during construction.
- x. A description of other permits and approvals being sought, including the need for permits from state and/or federal agencies.
- xi. Additional information as required by the subsequent articles of this chapter.

**C.H. Mitigation Monitoring and Maintenance.**

1. All mitigation areas shall be maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the Director.

2. The ~~technical administrator~~ Director shall have the authority to require that ~~compensatory~~ mitigation projects be monitored annually for at least five years to establish that performance standards have been met. Required monitoring reports shall be submitted to the County annually during the monitoring period to document milestones, successes, problems, and contingency actions of the compensatory mitigation.

- i. At year three, if the mitigation is meeting year 5 performance standards, ~~The technical administrator~~ Director may reduce the monitoring timeframe to three years for minor mitigation projects involving critical area or buffer revegetation or vegetation enhancement, but not for projects involving wetland creation, wetland restoration, stream restoration or other activities that require manipulation of soils or water. ~~All mitigation areas shall be~~

Comment [CES30]: Moved from below.

~~maintained and managed to prevent degradation and ensure protection of critical area functions and values subject to field verification by the technical administrator.~~

Comment [CES31]: Moved to (1)

- ii. The ~~technical administrator~~ Director shall have the authority to extend the monitoring period, require corrective measures, and/or require additional monitoring reports beyond the initial monitoring period for any project that does not meet the performance standards identified in the mitigation plan, or does not provide adequate replacement for the functions and values of the impacted critical area.

~~2-3.~~ Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC [16.16.265](#).

~~D-1.~~ **Mitigation Assurance.**

1. The applicant and his/her representatives shall demonstrate sufficient scientific expertise and capability to implement the mitigation, monitor the site, and make corrections if the project fails to meet projected goals. The ~~technical administrator~~ Director may require the following to ensure that the mitigation is fully functional:
  - i. The applicant shall post a mitigation surety in the amount of 125%~~percent~~ of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater. The surety shall be based on an itemized cost estimate of the mitigation activity including clearing and grading, plant materials, plant installation, irrigation, weed management, monitoring, and other costs.
  - ii. The surety shall be in the form of an assignment of funds or other means approved by the ~~technical administrator~~ Director.
  - iii. Surety authorized by this section shall remain in effect until the ~~technical administrator~~ Director determines, in writing, that the standards bonded for have been met. Surety shall generally be held by the County for a period of five years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary. Surety for construction may be reduced after initial completion in an amount not to exceed the cost of monitoring plus not less than 25%~~percent~~ of the construction cost.
  - iv. Depletion, failure, or collection of surety funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, or monitoring.
  - v. Public development proposals shall be relieved from having to comply with the bonding requirements of this section if public funds have previously been committed for mitigation, maintenance, or monitoring.
  - vi. Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default subject to the provisions of WCC [16.16.285](#), and the County may demand payment of any financial guarantees or require other action authorized by the County code or any other law.

- vii. Any funds recovered pursuant to this section shall be used to complete the required mitigation ~~or equivalent~~.

~~E.J.~~ **Permanent Protection.** All mitigation areas shall be protected and managed to prevent degradation and ensure protection of critical area functions and values in perpetuity. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC [16.16.265](#). If additional development is proposed that impacts a mitigation area and those impacts are accounted for under a new, approved mitigation plan, such protection may be removed so long as the final plan meets the requirements of this chapter for all cumulative impacts.

**16.16.261 Alternative ~~or innovative~~ Mitigation Plans.**

- A. The County shall consider and may approve alternative ~~or innovative~~ mitigation plans for major developments (as defined in Article 9 of this chapter), planned unit developments (pursuant to WCC Chapter [20.85](#) ), and/or development agreements (pursuant to RCW [36.70B.170](#) through [36.70B.210](#)).
- B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:
1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
  2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring will be adequately funded and effectively implemented;
  3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
  4. In terms of functional value, the proposed mitigation plan results in equal or greater protection and conservation of critical areas functions, services, and values than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
  5. The plan is consistent with the general purpose and intent of this chapter, the Shoreline Management Program (WCC Title [23](#)), and the comprehensive plan;
  6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
  7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
- C. Alternative mitigation plans shall be reviewed concurrently with the underlying land use permit(s) and decisions to approve or deny such plans shall be made in accordance with the underlying permit process. The plan shall be reviewed by the ~~technical administrator~~ **Director** to ensure compliance with the general purpose and intent of this chapter and to ensure accuracy

of the data and effectiveness of proposed management strategies. In making this determination the ~~technical administrator~~ Director shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts. If the ~~technical administrator~~ Director finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision maker shall solicit comment pursuant to the public notice provisions of WCC Chapter 22.05 prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.

**16.16.262 Watershed-Based Management Plans.**

- A. The County may consider watershed-based management plans sponsored by watershed improvement districts, other special purpose districts, or other government agencies.
- B. If approved, said plan shall be used to satisfy the requirements of this chapter and provide relief and/or deviation as appropriate from the specific standards and requirements thereof; provided, that the standards of impact avoidance and minimization shall remain as guiding principles in the application of these provisions and when it is demonstrated that all of the following circumstances exist:
  - 1. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
  - 2. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;
  - 3. There is a clear likelihood for success of the proposed plan based on supporting scientific information or demonstrated experience in implementing similar plans;
  - 4. In terms of functional value, the proposed mitigation plan results in equal or greater restoration, protection, and conservation of the impacted critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;
  - 5. The plan is consistent with the general purpose and intent of this chapter, the comprehensive plan, and an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;
  - 6. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and
  - 7. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.
- C. Watershed-based management plans shall be approved by the County Council by ordinance and appended to this chapter. The process for approval shall be as follows:
  - 1. The plan shall be reviewed by the ~~technical administrator~~ Director to ensure compliance with the purposes of this chapter, the Whatcom County Shoreline Management Program (WCC

Title 23), and with the comprehensive plan, and to ensure accuracy of the data and effectiveness of proposed management strategies. In making this determination the ~~technical administrator~~ Director shall consult with the State Departments of Fish and Wildlife, Ecology, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts.

2. If the ~~technical administrator~~ Director finds the plan to be complete, accurate, and consistent with the purposes and intent of this chapter, the designated decision maker shall solicit comments pursuant to the public notice provisions of WCC Chapter 22.05 prior to final approval/denial of permission of the plan to substitute for the requirements and standards of this chapter.
3. The designated decision maker shall not approve watershed-based management plans that conflict with Chapter 90.82 RCW.

**16.16.263 Mitigation Bank~~ing~~.**

A. **Mitigation Bank Credits.** The County may approve the use of mitigation bank~~ing~~ credits as a form of compensatory mitigation for wetland and habitat conservation area impacts when the provisions of this chapter require mitigation and when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are consistent with the County comprehensive plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.
2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule, Chapter 173-700 WAC or as revised, and Chapter 90.84 RCW and the federal mitigation banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.
3. Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

B. **~~Establishing a Mitigation Bank.~~ Establishing a mitigation bank** shall require a major project permit in accordance with WCC Chapter 20.88 and shall be subject to a formal review process including public review as follows:

1. The bank sponsor shall submit a bank prospectus for County review. The prospectus shall identify the conceptual plan for the mitigation bank, including:
  - i. The ecological goals and objectives of the bank;
  - ii. The rationale for site selection, including a site map and legal description of the prospective bank site;

- iii. A narrative demonstrating compliance with the Whatcom County comprehensive plan, associated development standards and this chapter, shoreline restoration plan, watershed planning documents prepared and adopted pursuant to Chapter [90.82](#) RCW, and/or the salmonid recovery plan;
  - iv. A description of the existing site conditions and expected changes in site conditions as a result of the banking activity, including changes on neighboring lands;
  - v. A conceptual site design;
  - vi. A description of the proposed protective mechanism such as a conservation easement; and
  - vii. Demonstration of adequate financial resources to plan, implement, maintain, and administer the project.
2. The ~~technical administrator~~ Director shall review the bank prospectus either by participating in the state's Mitigation Bank Review Team (MBRT) process and/or by hiring independent, third-party expertise to assist in the review.
  3. If the ~~technical administrator~~ Director determines that the bank prospectus is complete, technically accurate, and consistent with the purpose and intent of this chapter, s/he shall forward the prospectus to the County Council for initial review. If the proposed bank involves conversion of agricultural land to nonagricultural uses, the County Council shall seek a recommendation from the agricultural advisory committee as to whether the conversion should be allowed. The committee's recommendation shall be nonbinding. The County Council may require mitigation for the loss of agricultural lands.
  4. If the County Council determines, based on the initial review, that the prospectus is valid, it shall issue a notice to proceed to the bank sponsor. Following receipt of the notice to proceed, the bank sponsor may submit application for a major project permit in accordance with WCC Chapter [20.88](#) . The notice to proceed shall not be construed as final approval of the bank proposal, but shall indicate approval to proceed with the development of the mitigation bank instrument, which details all of the legal requirements for the bank.
  5. Upon receipt of a draft mitigation banking instrument from the bank sponsor and major project permit application, the ~~technical administrator~~ Director shall review the banking instrument and major project permit in consultation with the MBRT and/or other third-party expert. Following review of the mitigation banking instrument and major project permit, the ~~technical administrator~~ Director shall make a recommendation to certify and approve, conditionally certify and approve, or deny the bank proposal and major project permit in accordance with the provisions of WCC Chapters [20.88](#) and [22.05](#) .
  6. Following receipt of the recommendation, the County Council shall proceed with review in accordance with the provisions outlined in WCC Chapters [20.88](#) and [22.05](#) .
  7. The bank sponsor shall be responsible for the cost of any third-party review.
- C. Award of Bank Credits. The award of bank credits for an approved bank may be negotiated based on habitat acreage, habitat quality, and contribution to a regional conservation strategy that has been approved by the County and other appropriate regulatory agency(ies). Credit availability may vary in accordance with agreed-upon performance criteria for the development of the resource

value in question. Awarded bank credits, subject to the approval of the County and regulatory agency(ies), may be made transferable. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-specific inquiry on a case-by-case basis for the project creating the impacts.

**D. Use of Bank Credits.**

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
  - a. The bank is certified under state rules;
  - b. The administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
  - c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

**16.16.264 In-Lieu Fees.**

To aid in the implementation of off-site mitigation, the County may develop an in-lieu-fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu-fee mitigation, and state water quality regulations. An approved in-lieu-fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu-fee program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu-fee program may be used when subsections A through F of this section apply:

- A. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.
- B. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.
- C. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.
- D. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within five years of the credit sale.
- E. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.
- F. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.

#### 16.16.265 Critical Areas Protective Measures.

When an impact to critical area or a buffer will occur due to a proposed development, a standard buffer width has been altered, or mitigation is required, one or more of the following protective measures shall be applied:

##### A. General measures (applicable to all projects)

1. **Building Setbacks.** ~~The County shall require buildings and other structures shall to be set back~~ a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required, ~~unless otherwise determined by the Director that a shorter distance will suffice.~~ This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. ~~The following uses may be allowed in the building set-back from the buffer if they do not cause damage to the critical root zone of trees in the buffer;~~
  - a. Landscaping;
  - b. Uncovered decks ~~less than 30 inches in height;~~
  - c. Building overhangs 18 inches or less;
  - d. ~~Impervious surfaces, including such as driveways, parking lots, roads, and patios;~~ provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;
  - e. Clearing and grading;
  - f. Utilities, including ~~W~~ wells, septic systems, and propane tanks with fuel capacities up to 500 gallons.
2. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project.

**Comment [CES32]:** Moved from below. Then amended on recommendation of our consultants. Mirrors COB regs.

##### B. Project Specific Measures. Based on the specifics of the project, the Director will determine which of the following apply:

1. **Tree Protection.** If significant trees are identified, such that their drip line extends beyond the reduced buffer edge, the following tree protection requirements must be followed:
  - a. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the dripline of the tree(s), unless otherwise approved by the department.
  - b. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
  - c. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
  - d. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.

**Comment [CES33]:** Added in keeping with similar tree protection measures adopted by Co/C in other parts of the WCC.

- e. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
- f. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention in the tree protection area.
- g. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

A-2. **Deterrent Devices.** The ~~technical administrator~~ Director, as a condition of permit approval, may require that the outer boundary of a wetland or habitat conservation area and its buffer, a mitigation site, a designated open space, or a conservation easement be identified with signs, markers, and/or fencing to minimize potentially harmful intrusions from adjacent land uses, to alert citizens to a potential public health or safety risk associated with a critical area, or to accomplish other objectives specifically provided for elsewhere in this chapter. The ~~technical administrator~~ Director shall provide specifications on the type, content, and size of the signs prior to permit approval. The signs shall be posted near primary access points and approximately every 200 feet along the critical area boundary.

3. **Notice on Title.** The owner of any property containing any critical area or buffer that are not altered by a proposed development for which a development permit is about to be issued shall record a ~~notice document~~ notice document with the County Auditor Real Estate Records, ~~in a format approved provided by the technical administrator~~ in a format approved provided by the Director, and provide a copy of the filed notice to the Department of Planning and Development Services ~~department at the time prior to the project permit is being issued.~~ This requirement may be waived by the Director for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits). The notice on title shall provide notice of:

- a. ~~advise of~~ The presence of a critical area(s) or buffer(s) on the property, and that limitations on actions in or affecting the critical area or buffer exist.
- b. ~~The notice shall provide that That~~ restrictions on uses within the critical area apply exist until such time as the Technical Administrator Director approves a change in to the restriction(s) and such approval is filed.

~~This Such~~ Such notice on title shall not be required for a development proposal by a public agency or public or private utility within a right-of-way or easement for which they do not have fee-simple title. ~~This requirement shall be waived by the technical administrator for certain geologically hazardous areas if s/he finds that the risk is so low as to not warrant notification (e.g., old alluvial deposits).~~

1-4. **Tracts and Easements.** Prior to final approval of any ~~development project~~ development project permit, the ~~part of the critical areas and required buffers that is located on the site within the review area (as specified in the Review & Reporting Requirements of each Article of this Chapter)~~ part of the critical areas and required buffers that is located on the site within the review area (as specified in the Review & Reporting Requirements of each Article of this Chapter) shall be protected using ~~one of~~ the following mechanisms:

- a. For land divisions other than short plats, p ~~Placed in a separate tract or tracts owned in common by all lots within a subdivision, short subdivision, or binding site plan or dedicated to a public or private land trust for conservation;~~

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b. ~~For all other project permit types, Covered by~~ Placed in a protective conservation easement, on a form provided or approved by Whatcom County; ~~or~~

c. ~~Mitigation areas shall be placed in a native growth protection area (NGPA) easement, on a form provided or approved by Whatcom County.~~

b. ~~public or private land trust dedication; or~~

c. ~~Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the county technical administrator or hearing examiner.~~

~~D.A. Building Setback. The county shall require buildings and other structures to be set back a minimum distance of 10 feet from the edge of geological hazard setback, a critical area buffer, or from the critical area where no buffer is required. The following uses are allowed in the building set back:~~

~~1. Landscaping;~~

~~2.1 Uncovered decks;~~

~~3.1 Building overhangs 18 inches or less;~~

~~4.1 Impervious surfaces such as driveways, parking lots, roads, and patios; provided, that such surfaces conform to the applicable water quality standards and that construction equipment does not enter or damage the buffer or critical area;~~

~~5.1 Clearing and grading;~~

~~6.1 Wells;~~

C. **Indemnification.** At the ~~technical administrator~~ Director's discretion, when a permit is granted for development or use within a geologic, flood, or other hazard area, the property owner shall sign an indemnification agreement acknowledging hazards posed to the development and absolving the County of all responsibility, to be recorded against the property prior to permit issuance.

~~D.A. Temporary protection measures to identify location of critical areas and buffers such as construction fencing, erosion and sediment control, or similar shall be required during construction of the proposed project.~~

#### **16.16.270 Reasonable Use Exceptions.**

A. If the application of this Chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a variance pursuant to WCC 16.16.273 (Variances), then a landowner may seek a reasonable use exception from the standards of this Chapter. Reasonable use exceptions are intended as a last resort when no plan for mitigation and/or variance can meet the requirements of this Chapter and allow the applicant a reasonable and economically viable use of his or her property. The reasonable use exception shall follow the variance and public notification procedures of WCC Title 22 (Land Use and Development).

B. Requests for reasonable use exceptions shall be a Type III project permit application (See WCC Title 22, Land Use & Development).

C. The Hearing Examiner shall only grant a reasonable use exception under all of the following conditions:

1. The proposed development is otherwise allowed under Whatcom County code.

**Comment [CES34]:** Added to meet permanent protection requirements of existing text.

**Comment [CES35]:** Policy change: Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner. However, to counter the additional time and cost of this process, staff is also proposing to use the new category of minor variances that Council recently created. (16.16.273 Variances.) They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number cases having to go to the Hearing Examiner.

**Comment [CES36]:** Moved from below

2. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses.
3. The application of this Chapter would deny all reasonable and economically viable use of the property so that there is no reasonable and economically viable use with a lesser impact on the critical area than that proposed.
4. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that is under the ownership or control of the applicant, change in use, reduction in size, change in timing of activity, and/or revision of project design.
5. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area.
6. The proposed development does not pose a threat to the public health and safety.
7. The proposed activities comply with all state, local and federal laws, such as special flood hazard areas restrictions and on-site wastewater disposal.
8. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply.
9. Any proposed modification to a critical area will be evaluated by the Hearing Examiner through consideration of an approved critical area assessment report and habitat management plan and will be the minimum modification necessary to allow reasonable use of the property.
10. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owners in segregating or dividing the property and/or creating the condition of lack of use after September 30, 2005.
11. The applicant has requested and been denied a variance under the provisions of WCC 16.16.273 (Variances).
12. For single-family residences, the maximum impact area shall not exceed 10% of the lot area or 2,500 square feet, whichever is greater; provided that in no instance shall it exceed ~~may be no larger than~~ 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that ~~are~~ is necessarily connected to the use and enjoyment of a single-family residence. ~~These~~ Such appurtenant developments includes garages, decks, driveways, parking, on-site septic systems, and all lawn and nonnative landscaping, with the following exceptions:
  - a. On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 4,000-square-foot maximum impact area; provided, that the access road or driveway meets the standards of WCC 16.16.620(FD) or 16.16.720(ED), as applicable.

b. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, approval of those driveway portions shall be sought through a shoreline variance (WCC 23.60.030) and the applicant shall demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.

**Comment [P/C37]:** P/C moved to keep but slightly modify the original language as shown. Passes 9-0.

A.D. The Hearing Examiner may issue conditions of approval including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. The Hearing Examiner may also specify mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible using best available science.

~~A. Permit applicants for a property so encumbered by critical areas and/or buffers that application of this chapter, including buffer averaging, buffer reduction, or other mechanism, would deny all reasonable use may seek approval pursuant to the reasonable use standards and procedures provided in this section.~~

~~B. Reasonable Use Standards.~~

- ~~1. Nothing in this chapter is intended to preclude all reasonable economic use of property. If the application of this chapter would deny all reasonable economic use of the subject property, including agricultural use, use or development shall be allowed if it is consistent with the zoning code and the purposes of this chapter.~~
- ~~2. To qualify as a reasonable use, the technical administrator or hearing examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:~~
  - ~~a. There is no portion of the site where the provisions of this chapter allow reasonable economic use, including agricultural use or continuation of legal nonconforming uses;~~
  - ~~b. There is no feasible alternative to the proposed activities that will provide reasonable economic use with less adverse impact on critical areas and/or buffers. Feasible alternatives may include, but are not limited to, locating the activity on a contiguous parcel that has been under the ownership or control of the applicant since September 30, 2005, change in use, reduction in size, change in timing of activity, and/or revision of project design;~~
  - ~~c. Activities will be located as far as possible from critical areas and the project employs all reasonable methods to avoid adverse effects on critical area functions and values, including maintaining existing vegetation, topography, and hydrology. Where both critical areas and buffer areas are located on a parcel, buffer areas shall be disturbed in preference to the critical area;~~
  - ~~d. The proposed activities will not result in adverse effects on endangered or threatened species as listed by the federal government or the state of Washington, or be inconsistent with an adopted recovery plan;~~
  - ~~e. Measures shall be taken to ensure the proposed activities will not cause degradation of groundwater or surface water quality, or adversely affect drinking water supply;~~
  - ~~f. The proposed activities comply with all state, local and federal laws, including those related to erosion and sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal;~~
  - ~~g. The proposed activities will not cause damage to other properties;~~

- h. ~~The proposed activities will not increase risk to the health or safety of people on or off the site;~~
- i. ~~The inability to derive reasonable economic use of the property is not the result of segregating or dividing the property and/or creating the condition of lack of use after September 30, 2005;~~
- j. ~~The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter;~~
- k. ~~a. For single family residences, the maximum impact area may be no larger than 4,000 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of a single family residence. These appurtenant developments include garages, decks, driveways, parking, on site septic systems, and all lawn and nonnative landscaping, with the following exceptions:~~
  - i. ~~On lots outside of the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical area and/or buffers, those portions of the driveway shall be excluded from the 4,000 square foot maximum impact area, provided, that the access road meets the standards of WCC 16.16.620(E) or 16.16.720(C), as applicable.~~
  - ii. ~~On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, approval of those driveway portions shall be sought through a shoreline variance (WCC 22.60.030) and demonstrate that the size and location of the driveway is the minimum relief necessary to access the development site.~~

**C. Reasonable Use Procedures:**

- 1. ~~Procedural requirements for reasonable use exception applications shall be as follows:~~
  - a. ~~Reasonable use exception applications shall be subject to an open record public hearing; except, that reasonable use exception applications for single family residential building permits, or for other development proposals that would affect critical area buffers, but not the critical areas themselves, shall be processed administratively by the technical administrator.~~
  - b. ~~Reasonable use exception applications that require an open record hearing shall be processed in accordance with Chapter 22.05 WCC.~~
  - c. ~~Reasonable use exception applications that are subject to administrative approval by the technical administrator shall be processed in accordance with Chapter 22.05 WCC.~~
  - d. ~~The hearing examiner or technical administrator shall have the authority to set an expiration date for any or all reasonable use approvals. The development proposal must be completed before the approval expires.~~
  - e. ~~Any person aggrieved by the granting, denying, or rescinding of a reasonable use exception by the technical administrator or any party of record may appeal the technical administrator's decision pursuant to WCC 16.16.280 or the hearing examiner decision pursuant to Chapter 22.05 WCC.~~

- ~~f. Any application for a reasonable use exception or approval which remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the technical administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, environmental (SEPA) review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~
- ~~2. All reasonable use exception applications or other approvals shall be subject to the provisions of this chapter, which are in effect at the time of application.~~
- ~~3. Each application for a reasonable use exception shall be accompanied by a fee as stated in the unified fee schedule.~~
- ~~4. In making reasonable use decisions, the technical administrator shall have the authority to require submittal of technical reports in accordance with WCC 16.16.255 and/or 16.16.260(B).~~

#### **16.16.273 Variances.**

- ~~A. Where strict application of and compliance with the dimensional requirements of this chapter renders compliance with these provisions an undue hardship and when no other feasible alternative exists, permit applicants may seek a variance for relief.~~
- ~~B. As described in WCC 22.05.024 (Variances) there are two types of variances pertaining to this Chapter: Minor and Major variances.~~
- ~~1. Minor variances shall be limited to variances for a 25% to 50% reduction of critical area buffers.~~
- ~~2. Major variances include all other variances.~~
- ~~A-C. pursuant to WCC 20.84.100. A variance applications shall be processed pursuant to WCC 22.05.024 (Variances), or if in the shoreline jurisdiction WCC 22.07.050 (Shoreline Variances), Chapter 22.05 WCC and meet the criteria therein.~~

#### **16.16.275 Nonconforming Uses, Structures, and Lotsuses/buildings.**

The following provisions shall apply to legally existing uses, and/or buildings and/or structures, or lots that do not meet the specific standards of this chapter:

- ~~A. The lawful use of any legal nonconforming building, structure, land, or premises existing on September 30, 2005, or authorized under a permit or approval issued, or otherwise vested, prior to that date may be continued, subject to this section and the provisions for a nonconforming structure in WCC Chapter 20.83; provided, that agricultural activities shall conform to Article 8 of this chapter (Conservation Program on Agriculture Lands).~~
- ~~A-B. If a nonagricultural nonconforming use or structure is intentionally abandoned for a period of five years 12 months or more, then any future use of the nonconforming building, land, or premises shall be consistent with the provisions of this chapter.~~
- ~~B-C. Expansion, alteration, and/or intensification of a nonconforming use is prohibited.~~
- ~~C-D. Expansion, alteration, and/or intensification of a legal nonconforming building, or structure (including normal maintenance and repair), is allowed unless such use will produce impacts that degrade the critical area, including but not limited to vegetation clearing; additional impervious surfaces; generation of surface water runoff; discharge, or risk of discharge of pollutants; increased noise, light or glare; or increased risk associated with geologically hazardous areas.~~

Comment [CES38]: To make consistent with T-20

~~D-E.~~ Nonconforming structures that are completely destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no alternative that allows for compliance with the standards of this chapter; provided, that:

~~1.~~ Intentional demolition or removal is not a casualty.

~~1-2.~~ The reconstruction process is commenced within ~~five years~~ 18 months of the date of such damage; and

~~2-3.~~ The reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection C of this section.

~~E-F.~~ Nonconforming uses, structures, and lots in the shoreline ~~areas-jurisdiction~~ shall be governed by the shoreline management provisions of WCC Title 23.

~~F-G.~~ When a ~~development-project~~ permit is sought for a parcel containing a nonconforming ~~building or~~ structure that has been intentionally abandoned for a period of five years or more, the ~~technical administrator~~ Director may require removal of the nonconforming building and restoration of the critical area or buffer in accordance with this chapter as a condition of permit approval.

Comment [CES39]: To be consistent with SMP

Comment [CES40]: To be consistent with SMP

#### **16.16.280 Appeals.**

Final permit decisions shall be subject to appeal in accordance with the procedures of WCC Chapter 22.05.

#### **16.16.285 Penalties and Enforcement.**

- A. Any person who violates any of the provisions of this chapter shall be liable for a civil offense and may be fined a sum not to exceed \$1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice of violation shall constitute a separate offense.
1. The penalty provided in subsection A of this section shall be assessed and may be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.
  2. Within 30 business days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revision shall be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within 10 business days of its issuance.
- B. If work activity has occurred on a site in violation of this chapter, prompt corrective action, restoration, or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the property owner for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that site for a period of up to six years.
- C. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the

site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 business days following the receipt of the correction notice, and provide for an administrative pre-deprivation hearing within 10 business days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative pre-deprivation hearing within 72 hours following receipt of the stop work order. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of \$500.00 up to a maximum fine of \$1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum \$500.00 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense.

- D. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.
- E. The prosecuting attorney may enforce compliance with this chapter by such injunctive, declaratory, or other actions as deemed necessary to ensure that violations are prevented, ceased, or abated.
- F. Any person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- G. After the Fact Permit Fee. After the fact permit application fees shall be double the amount established by the unified fee schedule.

#### **16.16.295 Open Space and Conservation.**

The following programs may be employed to ~~achieve the purposes of this chapter and~~ minimize the burden to individual property owners from application of the provisions of this chapter:

- A. Open Space. Any property owner whose property contains a critical area or buffer and who meets the applicable qualifying criteria may apply for open space taxation assessment pursuant to Chapter [84.34](#) RCW.
- B. ~~Native Growth Protection Area (NGPA) Conservation~~ Easement. Any person who owns an identified critical area or its associated buffer may place a ~~conservation-NGPA~~ easement over that portion of the property by naming the County or its qualified designee under RCW [64.04.130](#) as beneficiary of the conservation. This ~~conservation-NGPA~~ easement may be in lieu of separate critical areas tracts that qualify for open space tax assessment described in subsection A of this section. The purpose of the easement shall be to preserve, protect, maintain, and limit use of the affected property. The terms of the ~~conservation-NGPA~~ easement may include prohibitions or restrictions on access and shall be approved by the property owner and the County.
- C. Conservation Futures Fund. The County may consider using the conservation futures property tax fund as authorized by RCW [84.34.230](#) for the acquisition of properties containing significant critical areas and their associated buffers.

### Article 3. Geologically Hazardous Areas

#### 16.16.300 Purpose.

The purpose of this article is to reduce risks to human life and safety and reduce the risk of damage to structures and property from geologic hazards, to allow for natural geologic processes supportive of forming and maintaining fish and wildlife habitat, and to regulate and inform land use and planning decisions. It is recognized that the elimination of all risk from geologic hazards is not feasible to achieve but the purpose of this article is to reduce the risk to acceptable levels.

#### 16.16.310 Geologically Hazardous Areas – Designation, Mapping, and Classification.

- A. Designation. Lands determined to be landslide, seismic, alluvial fan, volcanic, erosion (including channel migration zones), tsunami, seiche and landslide generated waves or mine hazard areas are hereby designated as geologically hazardous areas. Development in these geologic hazard areas can put human life, safety, health, and development at risk, alter geologic processes, adversely affect natural resources, and put the development and surrounding developments and uses at risk.
- B. Mapping. The approximate location and extent of known potential geologically hazardous areas are shown on maps maintained by the County. These maps are useful as a guide for project applicants and/or property owners, and County review of development proposals. However, they do not provide a conclusive or definitive indication of geologically hazardous area presence or extent. Potential geologically hazardous areas may exist that do not appear on the maps, and some potential geologically hazardous areas that appear on the maps may not meet the geologically hazardous areas designation criteria. The County shall update the maps periodically as new information becomes available and may require additional studies during the development review process to supplement and/or confirm the mapping. This chapter does not imply that land outside mapped geologically hazardous areas or uses permitted within such areas will be without risk. This chapter shall not create liability on the part of Whatcom County or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
- C. Classification. For purposes of this chapter, geologically hazardous areas shall include all of the following:
  - 1. Landslide Hazard Areas. Landslide hazard areas shall include areas potentially susceptible to landslides based on a combination of geologic, topographic, and hydrologic factors, as specified below. They include any areas susceptible to mass movement due to any combination of bedrock, soil, slope (gradient), slope aspect, slope form (concave, convex, planar), geological structure, surface and subsurface hydrology, or other factors. Landslide hazard areas shall also include areas along which landslide material may be routed or which may be subject to deposition of landslide-delivered material. Potential landslide hazard areas include but are not limited to the following areas:
    - a. Potential Landslide Hazard Areas. Potential landslide hazard areas exhibit one or more of the following characteristics:

- i. Areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published by the U.S. Geological Survey, Washington State Department of Natural Resources, or other reputable sources;
- ii. Areas with all three of the following characteristics:
  - (A) Slopes steeper than 15%~~percent~~;
  - (B) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - (C) Springs or groundwater seepage;
- iii. Areas that have shown movement and/or are underlain or covered by mass wastage debris;
- iv. Potentially unstable slopes resulting from river or stream erosion or undercutting by wave erosion;
- v. Slopes having gradients steeper than 80%~~percent~~ subject to rockfall during seismic shaking;
- vi. Areas that show past sloughing or calving of sediment or rocks resulting in a steep slope that is poorly vegetated;
- vii. Slopes that are parallel or sub-parallel to planes of weakness (which may include but not be limited to bedding planes, soft clay layers, joint systems, and fault planes) in subsurface materials;
- viii. Areas that show evidence of, or are at risk from, snow avalanches;
- ix. Deep-seated landslide areas characterized by one or more of the following features: scalloped ridge crests at the top of the slope, crescent-shaped depressions, head scarps, side scarps, ponds or sag areas on midslopes, benches and scarps on midslope areas, hummocky ground, or linear fractures in the ground. These features may be evident in aerial images, topographic maps, LiDAR imagery or on the ground;
- x. Areas below unstable slopes that could be impacted by landslide run-out;
- xi. Areas above or adjacent to unstable slopes that could be impacted if the landslide area expands;
- xii. Any area with a slope of 40%~~percent~~ or steeper and with a vertical relief of 10 or more feet except areas composed of competent bedrock or properly engineered slopes designed and approved by a geotechnical engineer licensed in the state of Washington and experienced with the site;
- xiii. Areas within which land use activities could affect the slope stability, including but not limited to areas with subsurface hydrologic flow, groundwater recharge areas and surface water flow;
- xiv. Areas of historical landslide movement including coastal shoreline areas mapped by the Department of Ecology Coastal Zone Atlas or the Department of Natural Resources slope stability mapping as unstable ("U" or Class 3), unstable old slides ("UOS" or Class 4), or unstable recent slides ("URS" or Class 5).

- b. **Active Landslide Hazard Areas.** Active landslide hazard areas are areas that exhibit indicators noted in subsection (C)(1)(a) of this section that have been determined through geological assessment to be presently failing or very likely to fail in the near future.
- 2. **Seismic Hazard Areas.** Whatcom County is located in a seismically active area that will be subject to ground motion during local and regional earthquakes. Seismic hazards and risk are partially addressed in the International Building Code (IBC) or International Residential Code (IRC). Additional seismic hazard areas for the purpose of this chapter include:
  - a. Areas designated as having a “high” and “moderate to high” risk of liquefaction susceptibility as mapped on the Liquefaction Susceptibility Map by the Washington State Department of Natural Resources.
  - b. Areas that are identified as underlain by liquefiable soils and due to local topography are also subject to or interpreted as being potentially impacted by lateral spreading.
  - c. Areas located within 500 feet of quaternary fault zones with surface offsets.
- 3. **Alluvial Fan Hazard Areas.** Any area located at the base of a confined mountain channel and determined to be susceptible to clear water flooding, debris-laden flows and floods, and erosional impacts shall be designated as an alluvial fan hazard area. Watershed hydrology, geology, slope conditions, topography, current and historic land uses, roads and road drainage, valley bottom conditions, and channel conditions upstream of an alluvial fan area are all fundamental to potential hazards and risks on alluvial fans. Alluvial fan hazard areas shall include those areas on alluvial fans potentially impacted by:
  - a. Sediment-laden flows (e.g., debris flows and debris floods);
  - b. Clear water floods;
  - c. Stream channel changes (including channel avulsion, incision, aggradation or lateral erosion and migration);
  - d. Erosion.
- 4. **Volcanic Hazard Areas.** Volcanic hazard areas are those areas that have been affected, or have the potential to be affected, by pyroclastic flows, pyroclastic surges, lava flows, or ballistic projectiles, ash and tephra fall, volcanic gases, and volcanic landslides. Also included are areas that have been or have the potential to be affected by Case M, Case I, or Case II lahars, or by debris flows or sediment-laden events originating from the volcano or its associated deposits. In addition, volcanic hazards include secondary effects such as sedimentation and flooding due to the loss of flood conveyance as a result of river channel and flood plain aggradation. The implications of secondary effects may be observed at some distance from the initiating event, and may continue to impact affected drainages over many decades following the initiating event. Secondary effects may significantly alter existing stream and river channels, associated channel migration zones and floodplains due to stream and river bed aggradation and channel avulsion. Volcanic hazards include areas that have not been affected recently, but could be affected by future events. Volcanic hazard areas are classified into the following categories:
  - a. **Pyroclastic Flow Hazard Areas.** Areas that could be affected by pyroclastic flows, pyroclastic surges, lava flows, and ballistic projectiles in future eruptions. During any single eruption,

some drainages may be unaffected by any of these phenomena, while other drainages are affected by some or all phenomena. Recurrence interval is not known.

- b. Ash/Tephra Fall Hazard Areas. The location of ash/tephra fall hazards at Mount Baker is predominantly controlled by the prevailing westerly winds observed on the west coast of North America. However, easterly winds do occur in the region and direct ash/tephra fall impacts to Whatcom County population centers are certainly a possibility. Health hazards, power outages, negative impacts to machinery and aircraft, structural damage (e.g., roof collapse) and extensive disruption of daily activities are all potential hazards.
- c. Lateral Blast Hazard Areas. Lateral blast hazards result from low-angle, explosive volcanic eruptions that emanate from the flank of a volcano. The occurrence of a lateral blast is largely unpredictable, both with respect to timing and direction, and does not appear to be a common feature of eruptive activity at Mount Baker or at other volcanoes globally. Extensive destruction is likely within the lateral blast zone, and mitigation is generally considered unachievable.
- d. Volcanic Landslide Hazard Areas. Landslides are common on volcanoes due to their relative height, steepness, and weakness in both the underlying bedrock and the volcanic deposits due to magma movement and chemical weathering. Landslide size is highly variable depending on site conditions and type, but may achieve high velocity and momentum which can carry a landslide across valleys and ridgelines. Given the range of possible landslide types and sizes, specific hazards, risk zones and recurrence interval have not been delineated at Mount Baker. Volcanic landslide hazards are associated with lahar hazards as they pose the potential to generate small- to large-scale cohesive lahars.
- e. Lahar Hazard Areas.
  - a. Case M Lahar Hazard Areas. Areas that could be affected by cohesive lahars that originate as enormous avalanches of weak, chemically-altered rock from the volcano. Case M lahars can occur with or without eruptive activity. A single, post-glacial Case M lahar deposit is known to have traveled down the Middle Fork Nooksack River, and is postulated to have continued down the main stem of the Nooksack River, eventually reaching Bellingham Bay, and to have also flowed north to Canada along the prehistoric path of the Nooksack River. Case M lahars are thus interpreted to pose a threat to the Sumas River drainage due to the potential for bed aggradation and channel avulsion to overtop the low-lying drainage divide that exists between the Nooksack and Sumas River drainages. Case M lahars are considered high-consequence, low-probability events.
  - b. Case I Lahar Hazard Areas. Areas that could be affected by relatively large non-cohesive lahars, which most commonly are caused by the melting of snow and glacier ice by magmatic activity and associated processes, but which can also have a non-eruptive origin. The average recurrence interval for Case I lahars, based on deposits identified along the flanks of Mount Baker, is postulated to be 500 years or greater. However, renewed magmatic activity at Mount Baker would be indicative of greatly increased

potential for Case I lahar generation; this may reduce the recurrence interval to approximate that of Case II lahars.

- c. Case II Lahar Hazard Areas. Areas that could be affected by moderately large debris avalanches or small cohesive lahars, or other types of debris flow generated on the east flank of Mount Baker at Sherman Crater or the upper Avalanche Gorge. Case II lahars impact the Baker Lake basin and drainage, and are considered correlative to Case I lahars that may impact the primary drainages on the west and north of Mount Baker, but with increased frequency and comparable volume. The postulated recurrence interval for Case II lahars at Mount Baker is less than 100 years.
5. Erosion Hazard Areas. Erosion hazard areas shall include:
  - a. Channel migration zones, also known as riverine erosion areas, are defined as the areas along a river or stream within which the channel(s) can be reasonably predicted to migrate over time. This is a result of natural and normally occurring geomorphic, hydrological, and related processes when considered with the characteristics of the river or stream and its surroundings, and in consideration of river and stream management plans. Channel migration hazard areas shall include potential channel migration, channel avulsion, bank erosion, and stability of slopes along the river or stream;
  - b. Coastal erosion areas that are subject to shoreline retreat from wind, wave, and tidal erosion.
6. Tsunami Hazard Areas. Tsunami hazard areas include coastal areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a tsunami generated by seismic events.
7. Seiche and Landslide Generated Wave Hazard Areas. Seiche and landslide generated wave hazard areas include lake and marine shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of a seiche or landslide generated waves. No known best available science is currently available to characterize potential seiche hazards in Whatcom County.
8. Mine Hazard Areas. Mine hazard areas shall include those lands in proximity to abandoned mines and associated underground mine workings where mine workings are less than 200 feet below ground level. Mine workings include adits (mine entrances), gangways (haulage tunnels), rooms and chutes (large voids), drifts, pillars (rock left for support) and air shafts. Mine hazards include subsidence, which is the uneven downward movement of the ground surface caused by underground workings caving in; sink holes; contamination of ground and surface water from tailings and underground workings; concentrations of lethal or noxious gases; and underground mine fires.

**16.16.320 Geologically Hazardous Areas – ~~Protective Measures~~General standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), the following requirements shall apply to all activities in geologically hazardous areas:

- A. **General~~ly~~.** New developments shall be located and/or engineered and constructed to reduce risks to life, health, safety, and buildings, and not increase potential for landslides or erosion that could

impact either other properties, public resources, or other critical areas. The County may impose conditions on development activity in a geologically hazardous area as needed to:

1. Protect human life and safety;
2. Minimize the potential for property damage related to seismic events, erosion and/or landslides;
3. Minimize the need for stream or riverbank or coastal bluff stabilization in the future;
4. Reduce public liabilities for damages associated with geologic hazards;
5. Protect slope stability and minimize erosion, seismic, and/or landslide hazard risks;
6. Maintain natural sediment and erosion processes that are integral to the health and sustainability of freshwater and marine ecosystems as well as minimizing impacts to stream, river, and coastal processes such as channel infill, channel migration, sediment transport, or flooding;

B. **Impact Avoidance.** Impact avoidance measures shall include, but not be limited to, locating the use/development outside of the hazard area, reducing the number, size or scale of buildings and appurtenant features; altering the configuration or layout of the proposed development; implementing special engineering methods for construction, drainage, runoff management, etc.; preserving native vegetation; and other feasible protective measures as determined by an alternatives analysis. For some geologic hazards (except for lahar hazards), impact avoidance may mean no development will be permitted on a property. So long as an applicant complies with WCC [16.16.350](#)(B), the County shall not require lahar hazard impact avoidance measures that reduce the number, size, or scale of buildings or appurtenant features; or prevent uses otherwise allowed per the property's zoning district based solely on the property's location within a lahar hazard zone.

C. **Stormwater Management.** Development shall manage on-site stormwater by developing a properly sized stormwater management system using appropriate stormwater techniques to protect geologically hazardous areas. Low Impact Development and Low Impact Development Best Management Practices are preferred, unless demonstrated to be infeasible.

D. **Location of Alterations.** New development shall be directed toward portions of a parcel or parcels under contiguous ownership that are not subject to, or at risk from, geological hazards (except for lahar hazards) and/or are outside any setback or buffer established by this chapter.

~~D. **Critical Facilities Prohibited.** Critical facilities as defined in WCC 16.16.900 shall not be constructed or located in geologically hazardous areas if there is a feasible alternative location outside geologically hazardous areas that would serve the intended service population. If allowed, the critical facility shall be designed and operated to minimize the risk and danger to public health and safety to the maximum extent practicable.~~

E. **Review by Qualified Professional.** A geologist or other qualified professional, licensed in the state of Washington, shall review development proposals that occur in potentially geologically hazardous areas to determine the potential risk. If development takes place within an identified geologically hazardous area requiring design or structural elements to minimize the hazard, the mitigation shall be designed by a qualified professional licensed in the state of Washington with expertise in mitigation of geological hazards.

Comment [CES41]: Moved to 16.16.322

- F. **Life of Structure.** Proposed development shall be sited far enough from erosion and landslide hazard areas to ensure at least 100 years of useful life for the proposed structure(s) or infrastructure. The location ~~should~~ shall be determined by a geologist or other qualified professional licensed in the state of Washington and ~~should~~ be based on site-specific evaluation of the landslide and/or erosion hazard.

**16.16.322 Geologically Hazardous Areas – General Use or Modification.**

- A. **Remodels and Additions.** Any proposed remodel or addition to an existing permitted or nonconforming structure that exceeds a valuation of greater than 50% ~~percent~~ of the fair market value shall be required to ensure that the entire structure is improved in accordance with all Article 3 requirements.

- B. **Critical Facilities Prohibited.** Critical facilities as defined in WCC 16.16.900 shall not be constructed or located in geologically hazardous areas if there is a feasible alternative location outside geologically hazardous areas that would serve the intended service population. If allowed, the critical facility shall be designed and operated to minimize the risk and danger to public health and safety to the maximum extent practicable.

Comment [CES42]: Moved from 16.16.320

- ~~B.C.~~ **Agricultural Activities.** Agricultural activities (uses and structures) may be allowed within geologically hazardous areas without a conservation farm plan as long as the activity does not increase the potential for landslides, channel migration, or alluvial fan hazards on or off the site; except, that a conservation farm plan shall be required for agricultural activities within landslide hazard areas and associated landslide hazard area setbacks (WCC 16.16.325(C)).

- ~~C.D.~~ **Land Subdivision.** Land that is located wholly within a landslide hazard area, riverine or coastal erosion hazard area, alluvial fan hazard area, lahar hazard area, or mine hazard area or its buffer may not be subdivided to create buildable parcels entirely within the hazardous area. Land that is located partially within a hazard area or its setback may be divided; provided, that each resulting lot has sufficient buildable area outside of the hazardous area with provision for drainage, erosion control and related features that will not adversely affect the hazard area or its setback.

**16.16.325 Landslide Hazard Areas – Use and Modification Standards.**

- A. **General Standards. Allowed Uses and Modifications.** The following ~~uses and modifications activities~~ may be allowed in active landslide hazard areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with landslide hazards, and when the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose:
1. **Reasonable Use.** Developments that will not increase the threat to the health or safety of people and will not increase potential for landslides on or off the site and meet the reasonable use standards as set forth in WCC 16.16.270.
  2. **Utilities.** Utility lines and pipes that are above ground, properly anchored and/or designed so that they will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in a risk of mass wasting. Such utility lines may be permitted only when the applicant demonstrates that no other feasible alternative is available to serve the affected population.

**3. Trails.** Trails shall be meet all of the following:

- a. The applicant demonstrates that no other feasible alternative exists.
- b. The trail engineering design and construction methods minimize the need for major repair or reconstruction.
- c. Specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.
- d. Exceptions or deviations from technical standards for width or other dimensional measurements may require a variance.

**4. Development Access.** Access driveways and roads shall meet all of the following:

- a. The applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW.
- b. A qualified professional designs the driveway or access road to minimize the need for major repair or reconstruction. The design shall provide a greater level of protection than road or driveway standards outside of geological hazardous areas.
- c. Specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.
- d. Exceptions or deviations from technical standards for width or other dimensional measurements may require a variance.

~~3. Access roads and trails that are engineered and built to standards that minimize the need for major repair or reconstruction beyond that which would be required in nonhazard areas. Access roads and trails may be permitted only if the applicant demonstrates that no other feasible alternative exists, including through the provisions of Chapter 8.24 RCW. If such access through critical areas is granted, exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts, including drainage and drainage maintenance plans, may be required.~~

~~4.5.~~ **Stormwater.** Stormwater conveyance through a properly designed stormwater pipe when no other storm-water conveyance alternative is ~~available~~ **feasible**. The pipe shall be located above ground and be properly anchored and/or designed so that it will continue to function in the event of a slope failure or movement of the underlying materials and will not increase the risk or consequences of static or seismic slope instability or result in increased risk of mass wasting activity.

**B. Landslide Hazard Management Zone Standards.** Alteration may be allowed within 300 feet of an active landslide hazard area when the ~~technical administrator~~ **Director** determines that the following standards are met:

- 1. The proposed alteration includes all appropriate measures to avoid, eliminate, reduce, or otherwise mitigate risks to health and safety.
- 2. The proposed alteration is located outside of a landslide hazard area and any required setback, as set forth in WCC [16.16.325\(C\)](#).
- 3. The development will not decrease slope stability on adjacent properties. The development shall not increase the risk or frequency of landslide occurrences.

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4. The removal and disturbance of vegetation, clearing, or grading shall be limited to the area of the approved development.
5. The development is outside of the area of potential upslope or downslope surface movement or potential deposition in the event of a slope failure.
6. The development will not increase or concentrate surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions.
7. The proposed alterations will not adversely impact other critical areas.
8. Structures and improvements shall minimize alterations to the slope contour, and shall be designed to minimize impervious lot coverage unless such alterations or impervious surfaces are needed to maintain slope stability.

**C. Landslide Hazard Area Setbacks.** ~~In addition to the applicable general protective measures found in WCC 16.16.265, the technical administrator shall have the authority to require s~~Setbacks shall be required from the edges of any identified landslide hazard area in accordance with the following:

1. The size of the setback shall be based on the findings of a qualified professional and shall minimize the risk of property damage, death, or injury resulting from landslides both on and off the property; provided, that the Director may require a minimum setback in accordance with International Building Codes adopted by Whatcom County.
2. The setback shall include consideration of the hydrologic contribution area to the potential landslide area and/or the area subject to the potential for mass movement, and the downhill area subject to potential deposition.
3. The setback shall include consideration of vegetation on the potential landslide area and in areas above and below the potential landslide area. The ~~technical administrator~~ Director shall have the authority to require vegetation or other measures to protect or improve slope stability and shall have the authority to require a mitigation plan developed in accordance with WCC 16.16.260, and a conservation easement in accordance with WCC 16.16.265(C) to ensure appropriate vegetation improvements are installed, maintained, and preserved.
4. Developments on sites that are directly adjacent to a wetland, marine shoreline, or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional buffer requirements and standards as set forth in the subsequent articles of this chapter.

**16.16.340 Seismic Hazard Areas – Use and Modification Standards.**

Development may be allowed in seismic hazard areas when all of the following apply:

- A. Structures in seismic hazard areas shall conform to applicable analysis and design criteria of the International Building Code.
- B. Public roads, bridges, utilities, and trails shall be allowed when there are no feasible alternative locations, and geotechnical analysis and design are provided that minimize potential damage to roadway, bridge, and utility structures, and facilities will not be susceptible to damage from seismically induced ground deformation. Mitigation measures shall be designed in accordance with the most recent version of the American Association of State Highway and Transportation Officials (AASHTO) Manual or other appropriate document.

**16.16.345 Alluvial Fan Hazard Areas – Use and Modification Standards.**

The following uses and modifications activities may be allowed in alluvial fan hazard areas when all reasonable measures have been taken to minimize risks and other adverse effects associated with alluvial fan hazards, when the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WCC [16.16.265](#) have been applied:

- A. **Reasonable Use.** Developments that will minimize the threat to the health or safety of people and will not increase the risks of alluvial fan hazards on or off the site and meet the reasonable use standards as set forth in WCC [16.16.270](#).
- B. **Infrastructure.** Roads, utilities, bridges, and other infrastructure that are located and designed to minimize adverse impacts on critical areas and avoid the need for channel dredging or diking or other maintenance activities that have the potential to substantially degrade river and stream functions.
- C. Permanent residential structures and commercial developments shall be allowed in alluvial fan hazard areas only if the fan has undergone a County-approved study to assess potential hazards, determine risks, and identify mitigation measures and is deemed suitable for development. The ~~technical administrator~~ **Director** shall make this determination based on a detailed assessment by a qualified professional that identifies the risks associated with a 500-year return period debris flow or the maximum credible event that could impact the alluvial fan.
- D. Accessory structures not involving human occupancy shall be allowed as long as the structure will not increase the alluvial fan hazards on or off the site.

**16.16.350 Volcanic Hazard Areas – Use and Modification Standards.**

- A. Ash/Tephra Fall and Lateral Blast Hazard Areas. Development may be allowed in these areas; provided, that all reasonable measures have been taken to minimize risks and adverse effects, and when the amount and degree of the alteration is limited to the minimum needed to accomplish the project purpose, and when the applicable general protective measures found in WCC [16.16.265](#) and the standards of WCC [16.16.320](#) have been applied.
- B. Lahar Hazard Zones.
  - 1. Subject to WCC [16.16.320](#)(A) through (C) and WCC [16.16.265](#), the following uses are allowed in any volcanic hazard areas:
    - a. Single-family residences and duplexes.
    - b. Accessory structures not involving human occupancy.
    - c. Sewer collection facilities, communication facilities, and other utilities that are not likely to cause harm to people or the environment if inundated by a lahar. Underground utilities such as pipelines shall be allowed if demonstrated through a geotechnical analysis to be sufficiently buried as to not likely be damaged by scour caused by a lahar.
    - d. Agricultural and forestry uses not including human habitation.
  - 2. Subject to WCC [16.16.320](#)(A) through (C) and WCC [16.16.265](#) (except subsection D when located wholly within a lahar hazard zone), the following uses are allowed in volcanic hazard areas subject to the submittal and approval of a volcanic hazard emergency management plan

meeting the requirements of subsection (B)(3) of this section; however, this requirement may be waived for properties located in an area with an estimated lahar arrival time of more than 60 minutes. The County will maintain travel time projection maps to estimate lahar approach times.

- a. Expansion of legal nonconforming uses meeting criteria of WCC [16.16.275](#) and WCC Chapter [20.83](#).
- b. All other uses allowed per the property's zoning district.
3. Where required by subsection (B)(2) of this section, a volcanic hazard emergency management plan shall be submitted for approval and meet the following requirements:
  - a. Is consistent with and integrated into a community emergency plan maintained by the sheriff's office of emergency management.
  - b. Includes an emergency evacuation plan.
  - c. Is required to be updated every five years.
  - d. Evacuation route maps must be posted on the premises.

**16.16.355 Erosion Hazard Areas – [Use and Modification Standards](#).**

- A. General Standards. For coastal, riverine, and stream erosion hazard areas, the following activities shall be allowed when the applicable general protective measures found in WCC [16.16.265](#) have been applied and as follows:
  1. Developments that minimize the threat to the health or safety of people and will not increase the risks of erosion hazards on or off the site and meet the reasonable use or variance standards as set forth in WCC [16.16.270](#) or [16.16.273](#), respectively.
  2. Discharge of surface water drainage into a coastal or riverine erosion hazard area, provided there are no other alternatives for discharge, and the drainage is collected upland of the top of the active erosion hazard area and directed downhill in an appropriately designed stormwater pipe that includes an energy dissipating device at the base of the hazard area. The pipe shall be located on the surface of the ground and be properly anchored so that it will continue to function under erosion conditions and not create or contribute to adverse effects on downslope critical areas. The number of pipes ~~should~~ shall be minimized along the slope frontage.
  3. Stormwater retention and detention systems, such as dry wells and infiltration systems using buried pipe or French drains, provided they are located outside the identified channel migration zone, designed by a qualified professional and shall not affect the stability of the site.
  4. Utility lines when no feasible conveyance alternative is available. The line shall be located above ground and properly anchored and/or designed so that it will not preclude or interfere with channel migration and will continue to function under erosion conditions; provided, that utility lines may be located within channel migration zones if they are buried below the scour depth for the entire width of the Channel Migration Zone (CMZ).
  5. Public roads, bridges, and trails when no feasible alternative alignment is available. Facilities shall be designed such that the roadway prism and/or bridge structure will not be susceptible to damage from active erosion.

6. Access to private development sites may be allowed to provide access to portions of the site that are not critical areas if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter [8.24](#) RCW. Exceptions or deviations from technical standards for width or other dimensions and specific construction standards to minimize impacts may be specified.
7. ~~Shoreline stabilization may be permitted when consistent with the shoreline stabilization regulations found in 23.40.190 (Shoreline Stabilization), regardless of whether the proposed project is within shoreline jurisdiction or not. Stream bank stabilization and shoreline protection may be permitted subject to all of the following standards:~~
  - ~~a. Shoreline protection measures located within coastal or riverine erosion areas shall use soft armoring techniques (bioengineering erosion control measures as identified by the State Department of Ecology and the Department of Fish and Wildlife guidance) unless the applicant provides a geotechnical analysis demonstrating that bioengineering approaches will not adequately protect the property.~~
  - ~~b. The armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply from feeder bluffs.~~
  - ~~c. The armoring will not adversely affect critical areas including habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.~~
  - ~~d. The proposal shall comply with WCC Title 23.~~
  - ~~e. Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply.~~
  - ~~f. The erosion is not being caused by upland conditions, such as the removal of vegetation or human alteration of existing drainage.~~
  - ~~g. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~
8. New residences shall be located outside of channel migration hazard areas or marine shoreline retreat areas. Accessory structures not involving human occupancy with a footprint equal to or less than 2,500 square feet shall be allowed; provided, that they are located at the outer edge of the migration zone as defined by this chapter; and provided, that the ~~technical administrator~~ [Director](#) may allow larger accessory structures where mitigating measures are feasible and provided for by the applicant.
9. New public flood protection measures and expansion of existing ones may be permitted, subject to WCC Title [17](#), Article 4 of this chapter, and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

B. Erosion Hazard Area Setbacks. In addition to the applicable general protective measures found in WCC [16.16.265](#), the ~~technical administrator~~ **Director** shall have the authority to require setbacks from the edges of any coastal, stream, or riverine hazard erosion area in accordance with the following:

1. The size of the setback shall be based on the findings of a qualified professional and shall protect critical areas and processes and minimize the risk of property damage, death or injury resulting from erosion over the life of the development, typically identified as 100 years; provided, that the Director may require a minimum setback in accordance with International Building Codes adopted by Whatcom County.
2. The setback shall include the uphill area subject to potential erosion, the downhill area subject to potential deposition, and any area subject to landslide as a result of erosion.
3. The setback shall include woody vegetation adequate to stabilize the soil and prevent soil movement. If the designated setback area lacks adequate woody vegetation, the ~~technical administrator~~ **Director** shall have the authority to require vegetation enhancement or other measures to improve slope stability.
4. Developments on sites that are directly adjacent to a wetland or marine shoreline or other habitat conservation area as defined in Article 7 of this chapter may be subject to additional setback requirements and standards as set forth in the subsequent articles of this chapter.

**16.16.365 Tsunami Hazard Areas – Use and ModificationStandards.**

The standards of WCC [16.16.320](#) shall apply. For development within tsunami hazard areas the proposed development shall be designed to provide protection from the tsunami hazard that meets the projected hazard on the Department of Natural Resources Tsunami Inundation Maps. For other low-lying coastal areas not included on the inundation maps, development shall be designed to provide protection for debris impact and an inundation as determined by current Department of Natural Resource modeling, unless other measures can be shown to provide equal or greater protection.

**16.16.367 Seiche and Landslide Generated Wave Hazard Areas – Use and ModificationStandards.**

Standards for seiche and landslide generated wave hazards will only apply if the hazard area is mapped by the United States Geologic Survey or the Department of Natural Resources, Division of Geology and Earth Resources or other credible source approved by Whatcom County. If a mapped hazard is present, the standards of WCC [16.16.320](#) and [16.16.350](#) shall apply. For residential development within mapped seiche and landslide generated wave hazard areas, the proposed development ~~should~~ **shall** be designed to withstand the mapped hazard. If the risk of the event is less than 0.1% ~~percent~~ on a yearly basis, development standards may not be required, but notice on property title will be required.

**16.16.370 Mine Hazard Areas – Use and ModificationStandards.**

The standards of WCC [16.16.320](#) and [16.16.350](#) shall apply.

**16.16.375 Geologically Hazardous Areas – Review and Reporting Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is, or may be, located within an active or potential

geologically hazardous area, the ~~technical administrator~~ Director shall have the authority to require the submittal of a geological assessment report.

- B. A geologic hazards assessment report for a geologically hazardous area shall include a field investigation and contain an assessment of whether or not the type of potential geologic hazard identified is present or not present and if development of the site will increase the potential for landslides or erosion on or off the site. Geology hazard assessment reports shall be prepared, stamped, and signed by a qualified professional. The report should:
1. Be appropriate for the scale and scope of the project;
  2. Include a discussion of all geologically hazardous areas on the site and any geologically hazardous areas off site potentially impacted by or which could impact the proposed project. If the affected area extends beyond the subject property, the geology hazard assessment may utilize existing data sources pertaining to that area;
  3. Clearly state that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site and provide a rationale as to those conclusions based on geologic conditions and interpretations specific to the project;
  4. Provide a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, and other adequate information to determine compliance with the requirements of this article;
  5. Provide conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties.
- ~~5-6.~~ Geotechnical reports shall conform to accepted technical standards and ~~G~~generally follow the guidelines set forth in the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006). In some cases, such as when it is determined that no landslide or erosion risk is present, a full report may not be necessary to determine compliance with this article, and in those cases a stamped letter or abbreviated report may be provided;
- ~~6-7.~~ If a landslide or erosion hazard is identified, provide minimum setback recommendations for avoiding the landslide or erosion hazard, recommendations on stormwater management and vegetation management and plantings, other recommendations for site development so that the frequency or magnitude of landsliding or erosion on or off the site is not altered, and recommendations are consistent with this article;
- ~~7-8.~~ For projects in seismic hazard areas, the report shall also include a detailed engineering evaluation of expected ground displacements, amplified seismic shaking, or other liquefaction and/or dynamic settlement effects and proposed mitigation measures to ensure an acceptable level of risk for the proposed structure type or other development facilities such as access roads and utilities;
- ~~8-9.~~ For projects in mine hazard areas, the report shall also include a description of historical data and remnant mine conditions, if available, dates of operation, years of abandonment, strength

of overlying rock strata, and other information needed to assess stability of the site together with analysis of surface displacement or foundation stress from collapse of workings.

- C. A geological assessment for a specific site may be valid for a period of up to five years when the proposed land use activity and site conditions affecting the site are unchanged. However, if any surface and subsurface conditions associated with the site change during that five-year period, the applicant may be required to submit an amendment to the geological assessment.

## Article 4. Frequently Flooded Areas

### 16.16.400 Purpose.

The purposes of this article are to:

- A. Reduce the risk to life and safety, public facilities, and public and private property that results from floods.
- B. Avoid or minimize impacts to fish and wildlife habitats that occur within frequently flooded areas.
- C. Protect and maintain the beneficial ecological functions and values of frequently flooded areas, including providing the necessary flow regime to form and maintain a full range of functional and accessible salmonid habitats both within and outside of frequently flooded areas.
- D. To ensure compliance with FEMA National Flood Insurance Program (NFIP) protection standards for critical habitats of species listed under the Endangered Species Act.
- E. In conjunction with the provisions of WCC Title 17, establish review procedures that provide an integrated approach to managing floodplain development and maintaining the capacity of the floodplain or floodway to convey and store flood waters.

### 16.16.410 ~~Frequently Flooded Areas – Designation and Mapping~~—~~Frequently Flooded Areas~~.

- A. Frequently flooded areas are areas located along major rivers, streams, and coastal areas where the depth, velocity, intensity and frequency of flood water during major events present a risk to human life and property. Areas susceptible to these types of hazards are hereby designated as frequently flooded areas and subject to the provisions of this article.

~~B. The approximate location and extent of frequently flooded areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as new hazard areas are identified and as new information becomes available. This article does not imply that land outside mapped frequently flooded areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of Whatcom County, any officer or employee thereof, or the Federal Insurance and Mitigation Administration (FIMA), for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.~~

Comment [CES43]: Moved to 16.16.220

~~C.~~ B. Frequently flooded areas shall include, but not be limited to:

1. ~~Areas subject to a one percent recurrence interval of flood water inundation or a 100-year base flood~~ Special flood hazard areas as mapped on the current effective Federal Emergency Management Agency's Flood Insurance Rate Maps (FIRM). This includes coastal high hazard areas as defined by this chapter and as identified and designated on the FIRM maps as Zone VE or V; provided, that tsunami hazard areas are designated as geologically hazardous areas and subject to the provisions of Article 3 of this chapter.
2. Other flood hazard areas identified by the County public works department based on review of historical data, high water marks, photographs of past flooding, or similar information from federal, state, county, or other valid sources when base flood elevation data from the Federal Insurance and Mitigation Administration has not been provided or is not accurate.

Comment [CES44]: FEMA definition added to definitions

**16.16.420 Frequently Flooded Areas – General Standards.**

- A. All development shall conform to the provisions of WCC Title [17](#), Flood Damage Prevention, and the applicable provisions of this chapter.
- B. Development within frequently flooded areas shall be allowed only when it is consistent with all of the following:
  - 1. FEMA’s National Flood Insurance Program (NFIP), including the protection standards for critical habitats for listed species;
  - 2. The mitigation sequence in WCC [16.16.260](#);
  - 3. Article 7, Habitat Conservation Areas, of this chapter;
  - 4. The applicable general protective measures found in WCC [16.16.265](#).
- C. The ~~technical administrator~~ Director shall have the authority to require a habitat assessment and, if necessary, a mitigation plan prepared by a qualified professional, in accordance with the FEMA Regional Guidance for the Puget Sound Basin, and mitigate for adverse impacts to the ecological functions of frequently flooded areas; provided, that such mitigation shall be consistent and compatible with the goal of protecting health and safety and minimizing risks to property.

**16.16.430 Frequently Flooded Areas – Review and Report Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development is or may be located within a frequently flooded area, the County public works department’s river and flood division and/or the ~~technical administrator~~ Director shall have the authority to require a critical area assessment report.
- B. The public works department shall have primary responsibility for reviewing and approving proposed developments for consistency with WCC Title [17](#). The ~~technical administrator~~ Director shall review development proposals for consistency with the standards provided in this chapter. Either may place conditions for approval and/or require mitigation in accordance with this chapter.
- C. In addition to the requirements of WCC [16.16.255](#), critical areas assessment reports for frequently flooded areas shall:
  - 1. Identify any federally listed species and associated habitats, and demonstrate that no harm will occur to such species or habitats as a result of development (inclusive of mitigation) within frequently flooded areas.
  - 2. Address adverse impacts to ecological functions and processes, including riparian vegetation. Positive impacts may also be discussed.
  - 3. Include mitigation for adverse effects on frequently flooded areas’ ecological functions, where applicable.
- D. The ~~technical administrator~~ Director shall have the authority to modify the requirements of subsection C of this section when s/he determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development.
- E. The ~~technical administrator~~ Director shall have the authority to require additional information to that required in subsection C of this section that discloses and describes the effects of proposed development on frequently flooded area functions, including, but not limited to, impacts on: storage and conveyance of flood water; channel migration; peak flows and flow velocities; redd scour and

displacement of rearing juvenile fish; sediment quality in streams; shear stress and bank erosion; water quality; wildlife habitat; fish access; and nutrients cycling or other hyporheic functions that link surface and groundwater systems.

- F. Critical areas assessment report requirements may be waived for single-family developments and structures accessory to agricultural uses when the ~~technical administrator~~ Director and the Public Works department determine that the development does not meet the FEMA requirements for a habitat assessment in FEMA Regional Guidance for the Puget Sound Basin~~no adverse impacts or risks to life, property, or ecological functions will occur.~~

## Article 5. Critical Aquifer Recharge Areas

### 16.16.500 Purpose.

The purposes of this article are to:

- A. Preserve, protect, and conserve Whatcom County's groundwater resources and their functions and values for current and future generations by protecting critical aquifer recharge areas from contamination.
- B. Prevent adverse impacts on groundwater quantity by regulating development activities that could deplete aquifer storage, reduce groundwater levels, and/or diminish infiltration and replenishment of groundwater.
- C. Prioritize the management, protection, and conservation of groundwater recharge areas as sources of potable water supply.
- D. Establish review procedures for development activities that have the potential to adversely affect critical aquifer recharge areas.

### 16.16.510 Critical Aquifer Recharge Areas – Designation, Classification and Mapping—~~Critical Aquifer Recharge Areas.~~

- A. Critical aquifer recharge areas play a crucial role in supplying potable water (as defined by WAC [365-190-030\(2\)](#)). These recharge areas have geologic conditions that allow high infiltration rates, which contribute significantly to the replenishment of groundwater. These conditions also create a high potential for groundwater contamination. These areas are hereby designated as critical areas and subject to the provisions of this chapter.
- B. The approximate location and extent of critical aquifer recharge areas are shown on the County's critical area maps. These maps are to be used as a guide and do not provide a definitive critical area designation. The County shall update the maps as recharge areas are identified and as new information becomes available.
- C. Critical aquifer recharge areas shall be designated and classified as follows:
  - 1. Low, Moderate, and High Susceptibility Aquifer Recharge Areas. Aquifer recharge areas susceptible to degradation or depletion because of hydrogeologic characteristics are those areas meeting the criteria established by the State Department of Ecology (Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances, July 2000, Publication No. 97-30, Version 4.0).
  - 2. Wellhead Protection Areas. The area defined by the boundaries of the 10-year time of groundwater travel, in accordance with WAC [246-290-135](#). For purposes of this chapter, all wellhead protection areas shall be designated as highly susceptible critical aquifer recharge areas.
- D. If special groundwater management areas or susceptible groundwater management areas are established in Whatcom County in accordance with WAC [173-200-090](#) or [173-100-010](#), respectively, then these areas shall be incorporated into the highly susceptible aquifer designation.

**16.16.520 Critical Aquifer Recharge Areas – General Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), all development in a critical aquifer recharge area shall meet the following standards:

- A. The proposed development will not cause contaminants to enter the aquifer and will not significantly affect the recharging of the aquifer in an adverse manner.
- B. The proposed development must comply with the water source protection requirements and recommendations of the Federal Environmental Protection Agency, State Department of Health, and the Whatcom County health department.
- C. The proposed development must be designed and constructed in accordance with the County stormwater management requirements or other applicable stormwater management standards (Whatcom County Development Standards Chapter 2, WCC Title [20](#)).

**16.16.525 Critical Aquifer Recharge Areas – Use and Modification Activity Subject to Critical Areas Review.**

The following development activities, when proposed in moderate and high susceptibility critical aquifer recharge areas, have the potential to adversely affect groundwater quality and/or quantity and shall require submittal of a critical areas assessment report as defined in WCC [16.16.255](#) and [16.16.535](#):

- A. Any development with an on-site domestic septic system at a gross density greater than one system per residence per acre.
- B. All storage tanks and storage facilities for hazardous substances and/or hazardous wastes; provided, that:
  - 1. The tanks must comply with Department of Ecology regulations contained in Chapters [173-360](#) and [173-303](#) WAC as well as International Building Code requirements;
  - 2. All new underground tanks and facilities shall be designed and constructed so as to prevent releases due to corrosion or structural failure for the operational life of the tank, or have a secondary containment system to prevent the release of any stored substances;
  - 3. All new aboveground storage tanks and facilities shall be designed and constructed so as to prevent the release of a hazardous substance to the ground, groundwaters, or surface waters by having primary and secondary containment.
- C. Vehicle repair, servicing and salvaging facilities; provided, that the facility must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur. Dry wells shall not be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.
- D. Use of reclaimed wastewater must be in accordance with adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health and the Whatcom County council per Chapter [57.16](#) RCW; provided, that:
  - 1. Surface spreading must meet the groundwater recharge criteria given in RCW [90.46.010](#)(10) and [90.46.080](#).

2. Direct injection must be in accordance with the standards developed by authority of RCW [90.46.042](#).

- E. Any other development activity that the ~~technical administrator~~ [Director](#) determines is likely to have a significant adverse impact on groundwater quality or quantity, or on the recharge of the aquifer. The determination must be made based on credible scientific information.
- F. Metals and hard rock mining and new sand and gravel mining subject to the provisions of the County's current mineral resource lands (MRL) review procedures in WCC Chapter [20.73](#); provided, that for new MRLs such activities shall be prohibited within the 10-year travel time zone of wellhead protection areas.

**16.16.530 Critical Aquifer Recharge Areas – Prohibited Uses.**

The following developments and uses are prohibited in critical aquifer recharge areas:

- A. New landfills, including hazardous or dangerous waste, municipal solid waste, special waste, wood waste of more than 2,000 cubic yards, and inert and demolition waste landfills.
- B. Underground Injection Wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells.
- C. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- D. Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
- E. Facilities that store, process, or dispose of radioactive substances.
- F. Other activities that the ~~technical administrator~~ [Director](#) determines would significantly degrade groundwater quality and/or reduce the recharge to aquifers currently, or potentially used as a potable water source, or that may serve as a significant source of base flow to a regulated stream. The determination must be made based on credible scientific information.

**16.16.535 Critical Aquifer Recharge Areas – Review and Report Requirements.**

- A. When County critical area maps or other sources of credible information indicate that the proposed development activities listed in WCC [16.16.525](#) occur within a critical aquifer recharge area, the ~~technical administrator~~ [Director](#) shall have the authority to require a critical area assessment report and to regulate developments accordingly. Critical areas assessment reports for aquifer recharge areas shall meet the requirements of WCC [16.16.255](#) and this section. Assessment reports shall include the following site- and proposal-related information unless the ~~technical administrator~~ [Director](#) determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:
  - 1. Available information regarding geologic and hydrogeologic characteristics of the site, including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;
  - 2. Groundwater depth, flow direction and gradient based on available information;
  - 3. Currently available data on wells and springs within 1,300 feet of the project area;
  - 4. The presence and approximate location of other critical areas, including surface waters, within 1,300 feet of the project area based on available data and maps;

5. Existing and available historic water quality data for the area to be affected by the proposed activity;
  6. Proposed best management practices;
  7. The effects of the proposed project on the groundwater quality and quantity, including:
    - a. Potential effects on stream flow, wetlands and/or other resources, and on ecosystem processes;
    - b. Predictive evaluation of groundwater withdrawal effects on nearby wells and surface water features; and
    - c. Predictive evaluation of contaminant transport based on potential releases to groundwater; and
  8. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for emergency response provisions as well as regular inspection, repair, and replacement of structures and equipment that could fail.
- B. If the applicant can demonstrate through a valid hydrogeological assessment that geologic and soil conditions underlying their property do not meet the criteria for low, moderate, or high susceptibility, the property shall not be considered a critical aquifer recharge area.

## Article 5.5. Areas within the Rural Residential District of Lummi Island

### 16.16.540 Areas within the Rural Residential District of Lummi Island.

#### 16.16.541 Exempt Wells.

Wells drilled as a replacement of an existing well are exempt from this article as long as the withdrawal rate is not increased by more than ~~20%-percent~~ of the existing well. If baseline withdrawal rate information is not available, this must be established by a licensed well driller prior to well replacement.

#### 16.16.542 Minimum Well Spacing for all New Wells.

Wells shall have a minimum of 200 feet distance between a new well and an existing operating well.

#### 16.16.543 Requirements for Public Water System Wells, Non-Group B Two Party Wells, and Non-Domestic Wells.

In addition to the minimum well spacing, the following measures are required for public water system wells, non-Group B two party wells, and nondomestic wells. (Includes “public water system” wells and non-Group B two party wells as defined under Whatcom County drinking water regulations and nondomestic use wells pumping greater than 250 gpd. “Public water system” is defined under WCC Chapter [24.11](#) as any water system providing piped water for consumption, excluding a system serving only one single-family residence and any system with four or fewer connections serving only residences on the same farm. A “non-Group B two party well” is defined in WCC Chapter [24.11](#) as a water system using one well to serve two single-family residences for which the director of health has waived all public water system requirements.)

##### A. Chloride Monitoring and Testing.

1. Monitoring. Well owners shall collect and have water samples analyzed for chloride concentration twice annually, in April and August, and submitted to the Whatcom County health department.
2. Chloride Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than ~~20%-percent~~ increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at ~~100%-percent~~ of the proposed average daily demand, at the end of which a water sample will be collected for analysis of chloride concentration. Subdivisions using individual wells are required to test wells simultaneously or, alternatively, have a licensed hydrogeologist evaluate well interference and water quality changes. Subdivision wells shall remain accessible for future testing in the event of subdivision expansion.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than ~~20%-percent~~ if chloride concentrations measured at the end of the test specified in subsection (A)(2) of this section are

greater than 100 mg/L. For systems expanding 20%~~percent~~ or less within one year, the highest chloride determination within the past year in subsection (A)(1) of this section cannot be greater than 100 mg/L.

4. Limit on Water Use by Existing Wells. Any increase (0 to 20%~~percent~~) in water use will not be permitted if either semiannual analysis in the previous 12-month period indicates greater than 100 mg/L chloride concentration. If the semi-annual chloride determinations have not been submitted as required, then the pump testing requirement of subsection (A)(2) of this section shall apply.
5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

B. Arsenic Monitoring and Testing in the Unconsolidated Aquifer.

1. The following monitoring and testing is required unless the well is determined not to be located in the unconsolidated sandstone aquifer. A Washington State licensed hydrogeologist must make the determination in a submitted report.
2. Arsenic Determinations for New Wells or Increased Pumping of Existing Wells. Applications for new wells, applications to convert an existing private well into a two party well, any application to expand the number of connections of a public water system, and nondomestic use wells proposing a greater than 20%~~percent~~ increase in groundwater withdrawals in an existing well require a minimum 24-hour-duration pumping test at 100%~~percent~~ of the proposed average daily demand, at the end of which a water sample will be collected for analysis of arsenic concentration.
3. Restrictions on New Wells or Increased Pumping of Existing Wells. New wells cannot be permitted, existing private wells cannot be converted to two party wells, existing public water systems cannot expand beyond their existing number of approved connections, and nondomestic wells cannot increase pumping rates greater than 20%~~percent~~ if arsenic concentrations measured at the end of the test specified in subsection (B)(2) of this section are greater than 10 µg/L.
4. Limit on Water Use by Existing Wells. Any increase (0 to 20%~~percent~~) in water use will not be permitted if the most recent arsenic determination indicated greater than 10 µg/L arsenic concentration. If no arsenic concentration has been determined in the past three years, the pumping test requirement in subsection (B)(2) of this section shall apply.
5. Prior to 10 days before the pumping test, all property owners within 1,000 feet of the well location shall be notified by first class mail informing them of the test and providing contact information of the person responsible for the testing.

**16.16.544 Administrative Waiver.**

Administrative waivers may be granted to any section of these requirements by petition to the administering agency. Waiver request must demonstrate that the project is consistent with the intent of these requirements; no health hazard would result from this action; and must be stamped by a licensed Washington State hydrogeologist.

## Article 6. Wetlands

### 16.16.600 Purpose.

The purposes of this article are to:

- A. Recognize and protect the beneficial functions, values, and services performed by wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging groundwater; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, adsorption, retention and transformation of sediments, nutrients, and toxicants.
- B. Regulate land use to avoid adverse effects on wetlands and maintain the functions, services, and values of freshwater and estuarine wetlands throughout Whatcom County.
- C. Establish review procedures for development proposals in and adjacent to wetlands.
- D. Establish minimum standards for identifying and delineating wetlands.

### 16.16.610 Wetlands – Designation, Rating, and Mapping.

- A. Wetlands shall be delineated in accordance with the requirements of RCW [36.70A.175](#). Unless otherwise provided for in this chapter, all areas within the county determined to be wetlands in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0), 2010 or as revised, are hereby designated critical areas and are subject to the provisions of this article.
- B. The approximate location and extent of wetlands are shown on the County's critical area maps. ~~However, this information has come from multiple sources over many years' time and is not precise, only general. Thus, these maps are to be used as a guide and do not provide a definitive critical area designation; a~~ property-specific assessment is necessary ~~for that to determine the wetland boundary. The County shall update the maps as new wetlands are identified and as new information becomes available.~~
- C. Wetlands shall be rated based on categories that reflect the functions and values of each wetland. Wetland categories shall be based on the criteria provided in the Washington State Wetland Rating System for Western Washington, revised 2014, and as amended thereafter, as determined using the appropriate rating forms and associated figures contained in that publication. These categories are generally defined as follows:
  - 1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.

**Comment [CES45]:** Deleted sections moved to 16.16.220 Identification of critical areas

2. Category II. Category II wetlands are: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).
3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

**16.16.612 Exceptions to Regulation.**

- A. All wetlands shall be regulated regardless of size; provided, that the following wetlands may be exempt from the requirement to avoid impacts (WCC 16.16.225 General Regulations), and they may be filled if the impacts are fully mitigated based on the remaining actions in WCC 16.16.260 (General Mitigation Requirements). In order to verify the following conditions, a critical area report for wetlands meeting the requirements in WCC 16.16.255 (Critical Areas Assessment Reports) must be submitted. hydrologically isolated Category IV wetlands less than 1,000 square feet in size may be adversely impacted when all of the following criteria are met:
  1. All isolated Category IV wetlands less than 4,000 square feet that:
    - a. Are not associated with riparian areas or their buffers;
    - b. Are not associated with shorelines of the state or their associated buffers;
    - c. Are not part of a wetland mosaic;
    - d. Do not score 5 or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology);
    - e. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in WCC 16.16.710 (Habitat Conservation Areas – Designation, Mapping, and Classification).
  2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this Chapter.
  1. The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate and stable seasonal inundation, presence of thin-stemmed emergent vegetation, and clean water;

- ~~2. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices;~~
- ~~3. The wetland is not located within a habitat conservation area, as defined in WCC 16.16.710, or buffer;~~
- ~~4. The wetland is not located within a floodplain and/or not associated with a shoreline of the state as defined by the County's shoreline master program (WCC Title 23);~~
- ~~5. The wetland is not part of a mosaic of wetlands and uplands. This criterion shall be determined using the guidance provided in Ecology's Wetland Rating System for Western Washington (Publication No. 14-06-029); and~~
- ~~6. The wetland is not identified as locally significant by a local watershed plan prepared pursuant to Chapter 400-12 WAC;~~

**Comment [CES46]:** Updated, using language from DOE Wetland Guidance for CAO Updates, Western Washington Version, 2016

#### **16.16.620 Wetlands – ~~Use and Modifications~~general standards.**

The following ~~uses and modifications~~ activities may be permitted in wetlands and/or wetland buffers as specified when, ~~pursuant to WCC 16.16.255, 16.16.260, and 16.16.630~~, all reasonable measures have been taken to avoid adverse effects on wetland functions and values as documented through an alternatives analysis, the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose, and ~~compensatory~~ mitigation is provided for all adverse impacts to wetlands ~~and their buffers~~ that cannot be avoided:

A. **Reasonable Use.** Developments that meet the reasonable use ~~exception or variance~~ standards as set forth in WCC ~~16.16.270 and 16.16.273, respectively.~~

#### **B. Utilities.**

1. **Utility lines** in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available shall be designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, and meet all of the following:
  - a. The utility line is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.
  - b. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation.
  - c. Buried utility lines shall be constructed in a manner that prevents adverse impacts to surface and subsurface drainage. This may include regrading to the approximate original contour or the use of trench plugs or other devices as needed to maintain hydrology.
  - ~~d.~~ d. Best management practices are used in maintaining said utility corridors such that maintenance activities do not expand the corridor further into the critical area.
  - ~~e.~~ e. The least impactful construction or installation method is used as demonstrated through an alternatives analysis.
2. **On-site sewage disposal systems (OSS)** may be permitted in wetland buffers when accessory to an approved ~~single-family residence residential structure~~ when:
  - a. ~~When it~~ it is not feasible to connect to a public sanitary sewer system; and
  - b. It is located as far as possible from the wetland; and

- c. ~~When it~~ is operated and maintained in accordance with WCC 24.05.160; provided, that adverse effects on water quality are avoided.

~~B.C.~~ **Public Roads or Bridges.** New or expanded public roads or bridges in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the road or bridge is designed and constructed to minimize physical, hydrologic, and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.

**D. Private Access.** Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided the access meets the following:

1. For direct wetland fill, there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.
2. Design and construction methods there are no feasible alternative alignments and measures are taken to maintain preconstruction hydrologic connectivity across the access road or driveway. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.
3. The access is designed to cause the least impact to the wetland and/or its buffer (which may require the applicant to apply for an Eexceptions or deviations from the technical Development Standards) for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.
- ~~1-4.~~ Access is not achievable through the administrative provisions of WCC 16.16.640 (Wetland Buffer Modification).

~~D.E.~~ **Agricultural Uses** ~~as follows:~~

1. Construction of an appurtenant structure that is associated with a primary agricultural use; or the reconstruction, remodeling, or maintenance of such structures in wetland buffers, subject to all of the following specific criteria:
  1. The structure is located within an existing lot of record and is an ongoing agricultural use.
  2. There is no other feasible location with less impact to critical areas.
  3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.
2. Ongoing agricultural activities, subject to the following:
  - a. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17; or
  - b. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in Article 8 of this chapter.

~~E.F.~~ **Domestic wells** serving single-family developments (including plats, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in wetland buffers when all of the following conditions are met:

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1. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible;
2. The well is more than 75 feet deep; and
3. Any impacts to the wetland and buffer from staging equipment and the well-drilling process are mitigated.

**F.G. Stormwater Management Facilities.**

1. Stormwater management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, or bioretention cells (engineered or rain gardens) may be permitted within the outer 50%~~percent~~ of a Category II, III or IV wetland buffer; provided, that:
  - a. Construction of the stormwater facility does not displace or impact a forested buffer;
  - b. The width of the buffer between the stormwater facility and the wetland edge is not less than the low intensity land use buffer standards in WCC [16.16.630](#);
  - c. There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;
  - d. The stormwater facility is designed to mimic and resemble natural wetlands and meets applicable county or state stormwater management standards and the discharge water meets state water quality standards; and
  - e. Low impact development approaches have been implemented to the maximum extent feasible per the Department of Ecology stormwater manual.
2. Surface water or stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a Category III or IV wetland buffer on a case-by-case basis when the ~~technical administrator~~ [Director](#) determines that all of the following are met:
  - a. Due to topographic or other physical constraints, there are no feasible alternative locations for these facilities in the outer buffer area or outside the buffer.
  - b. The discharge is located as far from the wetland edge and/or buffer as possible and in a manner that minimizes disturbance of soils and vegetation.
  - c. The discharge outlet is designed to prevent erosion and promote infiltration.
  - d. The dispersion outfall is within the outer 25%~~percent~~ of the buffer, unless a closer location is demonstrated to be the only feasible location. Alternative locations shall be the maximum distance from the wetland to alleviate the site constraint.
3. Phosphorus-reducing BMP structures approved and installed through the homeowners' improvement program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within the outer 50%~~percent~~ of a Category II, III or IV wetland buffer.

**G.H. Recreation.** Passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails; provided, that all of the following criteria are met:

1. There is no other feasible alternative route with less impact on the critical area.

2. The trail minimizes erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as wood recruitment and natural wildlife movement patterns.

~~1-3.~~ Private trails shall not exceed ~~six-four~~ feet in width, and public trails shall not exceed 10 feet in width, though some portions may be wider to meet the requirements of the Americans with Disabilities Act.

~~2-4.~~ They shall be made of pervious material or elevated where feasible.

~~3-5.~~ They shall be designed to avoid removal of significant trees.

6. Trails may include limited viewing platforms that shall not exceed eight feet in width and shall be made of pervious materials where feasible.

~~4-7.~~ When located in the buffer, they should be located in the outer 25% ~~percent~~ of the buffer; except, that public trails may be permitted closer to the wetland when necessary to provide wetland educational opportunities or for public health and safety; provided, that when closer than the outer 25%, the trail width is the minimum necessary for the trail class.

~~5-8.~~ They shall be constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

~~6-9.~~ If they must cross a wetland, they shall be elevated, constructed to minimize supports, and be the minimum size necessary to accommodate the level of service.

~~H. Single family developments may be permitted to encroach into wetland buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(B) (Reasonable Use) are met.~~

**Comment [CES47]:** Added per Scoping Document item #13c to give County Parks flexibility to increase public awareness and stewardship of critical areas.

#### **16.16.630 Wetland Buffers ~~s-widths~~.**

To protect the integrity, functions, and values of wetlands, the ~~technical administrator~~ Director shall have the authority to require buffers from the edges of all wetlands, including reestablished or created wetlands, (in addition to the building setback required by WCC 16.16.265(DA)(1)) in accordance with the following:

~~A. Wetland buffers shall be established to protect the integrity, functions and values of the wetland.~~

Wetland buffers shall be measured horizontally from a perpendicular line established by the wetland boundary based on the base buffer width identified in Table 1.

~~A-B. Wetland B~~ buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other ~~that are functionally and effectively disconnected from the wetland by an of existing, legally established road or other substantially~~ developed surface.

~~B-C.~~ The wetland buffer standards required by this Article presume the existence of a dense, multi-storied native vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer lacks adequate vegetation, the ~~technical administrator~~ Director may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

~~C-D.~~ The standard wetland buffer shall be based on a combination wetland category, habitat function score (from the wetland rating form), and land use intensity. The intensity of the land use shall be determined in accordance with the definitions found in Article 9 of this chapter unless the ~~technical~~

**Comment [CES48]:** Not needed. 16.16.270 would apply to any type of development and is covered by (A)

**Comment [P/C49]:** P/C moved to retain existing text. Passed 4-3

~~administrator~~ Director determines that a lesser level of impact is appropriate based on information provided by the applicant demonstrating that the proposed land use will have a lesser impact on the wetland than that contemplated under the buffer standard otherwise appropriate for the land use, as specified in WCC 16.16.640.

~~D.E.~~ Standard buffer widths are shown in Table 1. However, for Category I or II wetlands with “special characteristics” as determined and defined through the Washington State Department of Ecology (2014) Wetland Rating System (including estuarine, coastal lagoons, wetlands of high conservation value, bogs, forested, and interdunal wetlands), only buffers in the highest habitat score (8 to 9) group are applied.

Table 1. Standard Wetland Buffer Widths

Wetland Category	Habitat Function Score	Land Use Intensity*		
		High Buffer Width (feet)	Moderate Buffer Width (feet)	Low Buffer Width (feet)
Category I				
	8 – 9	300	225	150
	<del>5-6</del> – 7	150	110	75
	<del>&lt;3</del> – 5	100	75	50
Category II				
	8 – 9	<del>275</del> <u>300</u>	<del>150</del> <u>225</u>	<del>100</del> <u>150</u>
	<del>5-6</del> – 7	150	110	75
	<del>3 –</del> <5	<del>80</del> <u>100</u>	<del>60</del> <u>75</u>	50
Category III				
	8 – 9	<del>150</del> <u>300</u>	<del>110</del> <u>225</u>	<del>75</del> <u>150</u>
	<del>5-6</del> – 7	150	<del>100</del> <u>110</u>	<del>60</del> <u>75</u>
	<del>3 –</del> <5	80	60	<del>50</del> <u>40</u>
Category IV				
	<del>8-3</del> – <del>&lt;5</del> <u>9</u>	50	40	25

\* Definitions for high, moderate, and low intensity land use are provided in Article 9 of this chapter.

#### 16.16.640 Wetland Buffer Modification.

Buffer widths may be increased, decreased, or averaged in accordance with the following provisions, which provide flexible approaches to maximize both ecological functions and allowed uses. All mitigation proposed shall be consistent with State and this Chapter.

**A. Buffer Width Increasing.** The Director may require the standard buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:

1. To protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30% percent); or
2. To prevent windthrow damage; or

**Comment [CES50]:** Amending wetland buffer widths and habitat function score thresholds to make them consistent with the Department of Ecology’s most recent 2018 guidance. We have been notified by the DOE that though the Critical Areas Ordinance was only updated a few years ago, our wetland buffer widths and habitat function score thresholds do not meet their current guidance, and that they would be reviewing our SMP update to ensure we updated these during this process (linked because our CAO is a part of our SMP, see above). While many of the buffer widths would increase, the change in the habitat function score thresholds would place fewer wetlands in the higher buffer categories. Staff has worked with the local wetland consultants over the past year to analyze what differences this would make for most property owners, and based on data received from them it appears to be awash for the most common types of wetlands.

**Comment [CES51]:** Combined 16.16.640, 650, & 660 into better language from Skagit County

3. To protect wetlands or other critical areas from landslides, erosion or other hazards.

Comment [CES52]: Moved from 16.16.660

4. To maintain viable populations of existing species listed by the Federal or State government as endangered, threatened or sensitive; or

5. When a Category I or II wetland is located within 300 feet of:

- a. Another Category I, II or III wetland; or
- b. A fish and wildlife HCA; or
- c. A Type S or F stream; or
- d. A high impact land use that is likely to have additional impacts.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

B. **Buffer Width Averaging.** Buffer width averaging allows limited reductions of buffer width in specified locations while requiring increases in others. The widths of buffers may be averaged if this will improve the protection of wetland functions.

1. Averaging of required buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:

- a. The area of the buffer proposed for averaging has not been reduced pursuant to subsection (C). Buffer averaging is not allowed if the buffer has been reduced.
- b. Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and
- c. Averaging width will not adversely impact the wetland functions and values; and
- d. The wetland has significant differences in characteristics that affect its habitat functions; and
- e. The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
- f. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower functioning or less sensitive portion; and
- g. The buffer width of a Category I, II, or III wetland shall not be reduced below 75% of the standard buffer width.

2. Averaging of required buffer widths will be allowed for the following when the dimensional standards of subsection (B)(1) are met:

- a. To protect a natural feature (e.g., a stand of trees or snags) that otherwise would fall outside of the standard buffer.
- b. To provide connections with adjacent habitats or to address those situations where pre-existing development has reduced a buffer area to a width less than the required standard.

In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.

Comment [CES53]: Based on public comments, staff has amended this section to better meet DOE Guidance.

C. **Buffer Width Reduction.** The Director shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630 (Wetland Buffers) as follows:

1. The buffers of moderate and low impact land use projects may be reduced when all of the following apply:

- a. The area of the buffer proposed for reduction has not been averaged pursuant to subsection (B). Buffer reduction is not allowed if the buffer has been averaged.
- b. The applicant demonstrates buffer averaging is not feasible.
- c. The buffer shall not be reduced to less than 75% of the required buffer.
- d. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in WCC 16.16.260 (General Mitigation Requirements).
- e. To minimize impacts and provide equivalent functions and values as required by this section, the Director may require any or all of the following:
  - i. The use of alternative on-site wastewater systems in order to minimize site clearing, where appropriate;
  - ii. Using low impact development (LID) and LID best management practices where appropriate;
- ~~f. In order to offset habitat loss from buffer reduction, retaining existing native vegetation on other portions of the site equal to no more than the area impacted.~~

f. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;

g. All buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.

2. High impact land use projects may apply moderate land use intensity buffers when:

- a. For wetlands that score 3-5 habitat points, all applicable impact reduction measures from the following list are implemented (from Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix 8C (as updated in 2018):
  - i. Directing lights away from the wetland and buffer.
  - ii. Locating activities that generate noise away from the wetland and buffer.
  - iii. Routing all new, untreated runoff away from wetland while ensuring wetland is not dewatered.
  - iv. Establishing covenants limiting use of pesticides within 150 feet of wetland.
  - v. Applying integrated pest management.
  - vi. Retrofitting stormwater detention and treatment for roads and existing adjacent development.
  - vii. Preventing channelized flow from lawns that directly enters the buffer.
  - viii. Infiltrating or treating, detaining, and dispersing into the buffer new runoff from impervious surfaces and new lawns.
  - ix. Posting signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the County.
  - x. Using privacy fencing.

**Comment [CES54]:** Section amended to be consistent with DOE guidance (Wetlands in Washington State, Volume 2, Appendix 8C, updated 2018 and Guide for Developing CAOs, 2016)

**Comment [CES55]:** Based on public comments, staff has amended this section to better meet DOE Guidance.

**Comment [P/C56]:** P/C motion to strike. Carries 7-1-1

- xi. Planting with dense native vegetation appropriate for the County to delineate buffer edge and to discourage disturbance.
- xii. Using low impact development (LID) and LID best management practices where appropriate.
- xiii. Establishing a permanent conservation easement or tract to protect the wetland and the associated buffer.
- xiv. Using best management practices to control dust.

Comment [CES57]: Moved from the old 16.16.640

b. For wetlands that score 6 points or more for habitat function:

- i. All applicable impact reduction measures of subsection (C)(2)(a) are implemented, and;
- ii. A relatively undisturbed, vegetated corridor at least 100 feet wide between the wetland and any other Priority Habitats is protected pursuant to WCC 16.16.260(I) (General Mitigation Requirements – Permanent Protection). If no option for providing such a corridor is available, then only subsection (i) applies.

3. In all circumstances when the buffer between the area of reduction and the wetland is degraded, this degraded portion of the buffer shall include replanting with native vegetation in order to achieve a dense vegetative community.

Comment [P/C58]: P/C Motion to approve. Carries 9-0

4. Any person who alters or proposes to alter regulated wetlands shall reestablish, create, rehabilitate, or enhance (or a combination thereof) areas of wetland in order to compensate for wetland losses at the ratios described in mitigation ratios for projects in Western Washington in Table 8C-11 (as updated in 2014) in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Section 8C.2.3.

D. **Buffer Width Variance.** Standard buffer widths may be reduced by more than 25% through a variance pursuant to WCC 16.16.273 (Variances); provided, that buffer averaging beyond that allowed in subsection (B) is prohibited.

#### **~~16.16.640 Wetland buffer reduction.~~**

~~The technical administrator shall have the authority to reduce the standard buffer widths identified in WCC 16.16.630; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply; and provided further, that all of the following apply:~~

~~A. The buffer reduction shall not adversely affect the functions and values of the adjacent wetlands;~~

~~B. The buffer of a Category I, II, or III wetland shall not be reduced to less than 75 percent of the required buffer or 50 feet, whichever is greater;~~

~~C. The buffer of a Category IV wetland shall not be reduced to less than 50 percent of the required buffer, or 25 feet, whichever is greater;~~

~~D. The applicant implements all reasonable measures to minimize the adverse effects of adjacent land uses and ensure no net loss of buffer functions and values. Such measures may include, but are not limited to, the following:~~

~~1. Direct lights away from the wetland and buffer.~~

~~2.1. Locate activities that generate noise away from the wetland and buffer.~~

~~3.1. Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.~~

~~4.1. Establish covenants limiting use of pesticides within 150 feet of wetland.~~

~~5.1. Apply integrated pest management.~~

~~6.1. Retrofit stormwater detention and treatment for roads and existing adjacent development.~~

~~7.1. Prevent channelized flow from lawns that directly enters the buffer.~~

~~8.1. Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.~~

~~9.1. Post signs at the outer edge of the critical area or buffer to clearly indicate the location of the critical area according to the direction of the County.~~

~~10.1. Use privacy fencing.~~

~~11.1. Plant with dense native vegetation appropriate for the County to delineate buffer edge and to discourage disturbance.~~

~~12.1. Use low impact development (LID) and LID best management practices where appropriate.~~

~~13.1. Establish a permanent conservation easement or tract to protect the wetland and the associated buffer.~~

~~14.1. Use best management practices to control dust.~~

#### **16.16.650 Wetland buffer averaging.**

The technical administrator shall have the authority to average wetland buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when all of the following criteria are met:

- A. The buffer averaging does not reduce the functions or values of the wetland;
- B. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be generally parallel to the wetland boundary to avoid creating buffer “panhandles” unless it constitutes a wildlife corridor;
- C. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;
- D. The minimum buffer width of a Category I, II, or III wetland shall not be less than 75 percent of the widths established under WCC 16.16.630, or 50 feet, whichever is greater;
- E. The minimum buffer width of a Category IV wetland shall not be less than 50 percent of the widths established under WCC 16.16.630, or 25 feet, whichever is greater; and
- F. The buffer has not been reduced in accordance with WCC 16.16.640. Buffer averaging is not allowed if the buffer has been reduced.

#### **16.16.660 Wetland buffer increases.**

The technical administrator shall have the authority to increase the width of the standard buffer width on a case-by-case basis when there is sound evidence that a larger buffer is required by an approved habitat management plan as outlined in WCC 16.16.750, or such increase is necessary to:

- ~~A. Protect the function and value of that wetland including, but not limited to, compensating for a poorly vegetated buffer or a buffer that has a steep slope (greater than 30 percent); or~~
- ~~B. A. Prevent windthrow damage; or~~
- ~~C. A. Maintain viable populations of species such as herons and other priority fish and wildlife; or~~

~~D.A. — Protect wetlands or other critical areas from landslides, erosion or other hazards.~~

**16.16.670 Wetlands – Review and Reporting Requirements.**

- A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration may contain wetland indicators, contain or abut wetlands or wetland buffers, the ~~technical administrator~~ Director may require a site evaluation (reconnaissance) or critical area assessment report by a qualified professional to determine whether or not a regulated wetland is present and, if so, its relative location in relation to the proposed project area or site. If no regulated wetlands are present, then wetland review will be considered complete.
- B. If the ~~technical administrator~~ Director determines that a wetland indicator is more likely than not present, ~~ts/he technical administrator~~ shall require a wetland assessment report pursuant to WCC 16.16.255 and sub-sections C and D of this section.
- C. A wetland assessment is an element of a critical area assessment report that describes the characteristics of the subject property and adjacent areas. The wetland assessment shall include the occurrence, distribution, delineation, and determination of the wetland category and standard wetland buffers as set forth in WCC 16.16.630, and may include analysis of historical aerial photos, and review of public records.
- D. A wetland assessment shall include the following site- and proposal-related information unless the ~~technical administrator~~ Director determines that any portion of these requirements is already required by Article 2, or unnecessary given the scope and/or scale of the proposed development:
  1. Location information (legal description, parcel number, and address);
  2. A vicinity map;
  3. A site plan that includes scale and wetlands and associated buffers and proposed development if appropriate;
  4. A qualitative written assessment and accompanying maps of wetlands and buffers within 300 feet of the site and an estimate of the existing acreage for each. For on-site wetlands, the assessment shall include the dominant and subdominant plant species; soil type, color and texture; sources of hydrology (patterns of surface and subsurface water movement, precipitation, etc.); topography; and other pertinent information. The assessment of off-site wetlands shall be based on available information and shall not require accessing off-site properties;
  5. Wetland Analysis. An analysis of all wetlands and buffers (to the extent they can be legally accessed) including, at a minimum, the following information:
    - a. Wetland delineation conducted by a qualified professional and completed in accordance with WCC 16.16.610(A).
    - b. The wetland boundary shall be marked in the field (with flagging left in the field for Whatcom County verification and placed high enough to allow line of sight with vegetation growth) and surveyed using a methodology appropriate to scale of development. The surveyed wetlands areas shall be mapped showing location and size of all wetlands.

Methodology used shall be in the report with description of equipment (specs), accuracy, and pertinent description of how the coordinates were gathered.

- c. Determination of each wetland size.
  - d. Description of each wetland class and category.
  - e. Description of overall water sources and drainage patterns on site. Include all streams and drainages (Type S, F, Np, or Ns streams), shorelines, floodplains, flood-prone areas.
  - f. Description of vegetation, hydrologic conditions, and soil and substrate conditions.
  - g. Description of wildlife and habitat. Include all critical habitat for threatened and endangered species within 300 feet of the development footprint.
  - h. Topographic elevation, at two-foot contours provided by Whatcom County PDS for single-family proposals.
  - i. Functional assessment of the wetland and adjacent buffer using a local or state agency-recognized method and including the reference of the method and all data sheets.
  - j. Standard buffer requirements for each wetland. Copies of the wetland rating forms and associated figures from the Ecology Wetland Rating System for Western Washington, as amended.
- E. For single-family building permits, the applicant may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following:
1. ~~Availability of Field investigation by~~ County staff shall be at the discretion of the ~~technical administrator~~ Director and subject to workload and scheduling constraints.
  2. Fees for County staff services shall be in accordance with the unified fee schedule.
- F. If a regulated wetland buffer from a neighboring property extends onto a proposed development site for which review under this chapter is required, the ~~technical administrator~~ Director shall have the authority to require that deterrent devices be placed at the edge of the buffer in accordance with WCC [16.16.265](#). The applicant shall provide ~~written~~ documentation that no buffer encroachment will occur. The documentation shall be on a form provided by the Department ~~in the form of a letter or similar affidavit.~~

#### **16.16.680 Wetlands – Mitigation Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#), activities that adversely affect wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland function and values in accordance with WCC [16.16.260](#) and this section.

- A. In determining the extent and type of mitigation required, the ~~technical administrator~~ Director may consider all of the following when applicable:
1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;
  2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
  3. Observed or predicted trends regarding the gains or losses of specific wetland types in the watershed, in light of natural and human processes;

4. The likely success of the proposed mitigation measures;
5. Effects of the mitigation actions on neighboring properties; and
6. Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a watershed plan prepared pursuant to Chapter 400-12 WAC, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement, a fully authorized mitigation bank (WCC 16.16.263), or an in-lieu-fee program.

~~Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 3.~~

~~All mitigation areas shall be protected and managed to prevent degradation and ensure permanent protection of critical area functions and values. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.~~

~~Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~

Comment [CES59]: Now covered in 16.16.260

#### B. Type of Mitigation.

1. **Wetland Alterations.** Compensatory mitigation projects shall restore, create, rehabilitate, enhance, and/or preserve equivalent wetland functions and values pursuant to no net loss of function and area. Compensation for wetland alterations shall occur in the following order of preference:
  - a. Reestablishing (also referred to as restoring) wetlands on upland sites that were formerly wetlands.
  - b. Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative, invasive plant species.
  - c. Rehabilitation of existing wetlands for the purposes of repairing or restoring natural and/or historic hydrologic functions.
  - d. Enhancing existing significantly degraded wetlands.
  - e. Preserving Category I or II wetlands that are under imminent threat; provided, that preservation shall only be allowed in combination with other forms of mitigation ~~and~~ when

the ~~technical administrator~~ Director determines that the overall mitigation package fully replaces the functions and values lost due to development.

2. **Buffer Alterations.** Compensatory mitigation for buffer impacts:

- a. Shall be consistent with WCC [16.16.630](#) through [16.16.660](#); and
- b. May include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers, and other measures to achieve equivalent or greater buffer functions.

C. **Mitigation Ratios.**

1. ~~Compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio on an area basis.~~ Compensatory mitigation for wetland alterations shall be based on the wetland category and the type of mitigation activity proposed. The replacement ratio shall be determined according to the ratios provided in Table 2; provided, that the replacement ratio for preservation shall be 10 times the ratio for reestablishment or creation. The created, reestablished, rehabilitated, or enhanced wetland area shall, at a minimum, provide a level of function equivalent to the wetland being altered and shall be located in an appropriate landscape setting.
2. The mitigation ratios noted in Table 2 shall not apply to mitigation banks as defined by this chapter. Credit and debit procedures for mitigation banks shall be determined in accordance with the mitigation banking provisions outlined in WCC [16.16.263](#).
3. The ~~technical administrator~~ Director shall have the authority to adjust the ~~replacement mitigation~~ ratios in Table 2 when one or more of the following apply:
  - a. When a combination of mitigation approaches is proposed. In such cases, the area of altered wetland shall be replaced at a 1:1 ratio through reestablishment or creation, and the remainder of the area needed to meet the ratio can be replaced by enhancement or rehabilitation using Table 2.
  - b. When the project proponent has a demonstrated ability, based on past performance, to successfully design, construct, monitor and maintain wetland mitigation projects/sites.
  - c. When use of the guidance for Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington (Department of Ecology Publication No. 10-06-011, as amended) results in a lower mitigation ratio than the standard ratios.
4. ~~For permanent impacts to wetland buffers, unless the Director approves a habitat management plan with different ratios, mitigation shall be provided at the following ratios:~~
  - a. ~~Where the mitigation is in place and functional before the impact occurs (i.e., advanced mitigation), at a ratio determined by the functions, values, and goals of an advanced mitigation plan.~~
  - b. ~~Where the mitigation is in place and functional before within 1 year of the impacts occur occurring (i.e., advanced mitigation), at a 1:1 ratio (area or function); and~~
  - c. ~~Where the mitigation is placed after 1 year of the impact occurs occurring, at a 1.25:1 ratio (area or function); and~~
  - d. ~~For retroactive permits the Director may require the ratio to be up to shall be double the ratio in subsection (c) above.~~

Comment [P/C60]: P/C motion to amend as shown. Passes 7-0

Table 2. Compensatory Mitigation Ratios for Projects in Western Washington<sup>1</sup>

Category and Type of Wetland Impacts	Reestablishment or Creation	Rehabilitation Only	Reestablishment or Creation (R/C) and Rehabilitation (RH)	Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 1:1 RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II Estuarine	Case-by-case	4:1 Rehabilitation of an estuarine wetland	Case-by-case	Case-by-case	Case-by-case
All other Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I	No alteration allowed unless an essential public facility				

(Ratios indicate mitigation area to area disturbed.)

~~D.—Reestablished or created wetlands established pursuant to these mitigation provisions shall have adequate buffers to ensure their protection. The buffer shall be based on the category of the reestablished, created, rehabilitated, enhanced, or preserved wetland.~~

~~F.A. Compensatory mitigation shall be provided on site or off site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success; provided, that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed or landscape based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success; provided, that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 2.~~

~~F.A. All mitigation areas shall be protected and managed to prevent degradation and ensure permanent protection of critical area functions and values. Permanent protection shall be achieved through deed restriction or other protective covenant in accordance with WCC 16.16.265.~~

~~G.A. —Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~

<sup>1</sup> From Wetlands in Washington, Volume 2, Appendix 8C, Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System, Table 8C-11.

**16.16.690 ~~Wetland Compensatory~~ Wetland Mitigation Plan.**

- A. In addition to meeting the requirements of WCC [16.16.260](#)(B), a ~~compensatory~~ mitigation plan for wetland and wetland buffer impacts shall meet the following:
1. Provide an analysis of existing wetland functions and values and a detailed description of the effects of the proposed development on wetland and buffer function and value, including the area of direct wetland disturbance, area of buffer disturbance, area of buffer reduction, and area of buffer averaging, including documentation that the functions and values will be increased through reduction or average; effects of stormwater management; proposed hydrologic alteration including changes to natural drainage or infiltration patterns; effects on fish and wildlife species and their habitats; clearing and grading impacts; temporary construction impacts; and effects of increased noise, light, and human intrusion.
  2. The plan shall be based on applicable portions of the Washington State Department of Ecology's Guidelines for Developing Freshwater Wetland Mitigation Plans and Proposals, 2004, or other appropriate guidance document that is consistent with best available science.
  3. The plan shall contain sufficient information to demonstrate that the proposed activities are logistically feasible, constructible, ecologically sustainable, and likely to succeed. Specific information to be provided in the plan shall include:
    - a. The rationale for site selection;
    - b. General goals of the plan, including wetland function, value, and acreage;
    - c. Description of baseline (existing) site conditions including topography, vegetation, soils, hydrology, habitat features (e.g., snags), surrounding land use, and other pertinent information;
    - d. Field data confirming the presence of adequate hydrology (surface and/or groundwater) to support existing and ~~compensatory-mitigated~~ wetland area(s);
    - e. Nature of mitigation activities, including area of restored, created, enhanced, rehabilitated and preserved wetland, by wetland type;
    - f. Detailed grading and planting plans showing proposed post-construction topography; general hydrologic patterns; spacing and distribution of plant species; size and type of proposed planting stock; watering or irrigation plans; and other pertinent information;
    - g. To facilitate establishment of a stable community of native plants, A description of site treatment measures including ~~removal of noxious weeds and/or~~ invasive species ~~removal~~, use of mulch and fertilizer, placement of erosion and sediment control devices, and best management practices that will be used to protect existing wetlands and desirable vegetation;
    - g-h. A demonstration that the site will have adequate buffers sufficient to permanently protect the wetland functions.
- B. All ~~compensatory~~ mitigation projects shall be monitored in accordance with WCC [16.16.260](#)(C) for a period necessary to establish that performance standards have been met. The ~~technical administrator~~ Director shall have the authority to extend the monitoring period for up to 10 years and require additional monitoring reports when any of the following conditions apply:
1. The project does not meet the performance standards identified in the mitigation plan.

2. The project does not provide adequate replacement for the functions and values of the impacted critical area.
  3. The project involves establishment of forested plant communities, which require longer time for establishment.
- C. Reports shall be submitted annually for the first three years following construction and at the completion of years five, seven and 10 if applicable to document milestones, successes, problems, and contingency actions of the ~~compensatory~~ mitigation.

## Article 7. Fish & Wildlife Habitat Conservation Areas (HCA)

### 16.16.700 Purpose.

The purposes of this article are to:

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

### 16.16.710 Habitat Conservation Areas – Designation, Mapping, and Classification.

- A. Habitat conservation areas, ~~as defined in Article 9 of this chapter,~~ are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the county meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.
- B. The approximate location and extent of identified fish, wildlife, and sensitive plant habitat areas are shown on the County's critical area maps as well as state and federal maps. ~~However, these maps are to be used as a guide and do not provide a definitive critical area determination; each applicant is responsible for having a~~ property-specific ~~determination assessment is necessary to determine the extent of the HCA made pursuant to Article 2 of this chapter. The County shall update the maps as new habitat conservation areas are identified and/or more comprehensive information on function, condition, cover type, and resolution is developed.~~
- C. Habitat conservation areas shall include all of the following:
  1. Surface Waters of the State~~Streams~~.
    - a. All waterbodies ~~streams which that~~ meet the criteria for Type S, F, Np, or Ns waters as set forth in WAC [222-16-030](#) of the Washington Department of Natural Resources' (DNR) Water Typing System, as now or hereafter amended.
      - i. Type S ~~streams~~ waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(1) as now or hereafter amended, as a Type S water and are inventoried as "shorelines of the state" under the Shoreline Management Master Program for Whatcom County, pursuant to Chapter [90.58](#) RCW. Type S waters contain salmonid fish habitat.
      - ii. Type F ~~waters~~ streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(2) as now or hereafter amended, as Type F water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish.

Comment [CES61]: Covered by 16.16.220

- iii. Type Np ~~waters streams~~ are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(3) as now or hereafter amended, as Type Np water. Type Np waters do not contain fish habitat.
  - iv. Type Ns ~~waters streams~~ are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(4) as now or hereafter amended, as a Type Ns water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.
2. Ditches or other artificial watercourses are considered streams for the purposes of this chapter when:
- a. Used to convey natural streams existing prior to human alteration; and/or
  - b. The waterway is used by anadromous or resident salmonid or other resident fish populations; or
  - c. Flows directly into shellfish habitat conservation areas.
3. Areas in which federally listed species are found, have a primary association with, or contain suitable ~~or federally defined critical~~ habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (<http://ecos.fws.gov/ecp/>) ~~or the National Marine Fisheries Service (NMFS)~~ (<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>), as amended.
4. Areas in which state-listed priority species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the Washington Department of Fish and Wildlife's Priority Habitats and Species List. (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.
5. State priority habitats and areas associated with state priority species as listed in Washington Department of Fish and Wildlife's Priority Habitats and Species List (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.
6. Areas in which state-listed rare plant species are found, or contain suitable habitat for said listed species, as listed in the Department of Natural Resources' Natural Heritage Program (<http://www1.dnr.wa.gov/nhp/refdesk/plants.html>), as amended.
7. Areas in which state-listed saltwater critical areas are found, as listed in WAC [173-26-221](#)(2)(c)(iii).
8. Areas in which state-listed freshwater critical areas are found, as listed in WAC 173-26-221(2)(c)(iv).
- ~~8-9.~~ Naturally occurring ~~ponds~~ or manmade ponds and lakes under 20 acres in size and created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities.
- ~~9-10.~~ All other waters defined as wWaters of the state, ~~including marine waters.~~
- ~~10-11.~~ Natural area preserves, aquatic reserves, and natural resource conservation areas as defined by the Washington Department of Natural Resources.

**Comment [P/C62]:** Reinserted by the P/C 7-0-2-0.

**Comment [RE63]:** This is covered by Type S or Type F, Np, Ns water types

~~11,12.~~ Portions of the San Juan Islands National Monument within Whatcom County (including Chuckanut Rock, tip of Eliza Island, Eliza Island Rocks, Lummi Rocks, Baker's Reef, Carter Point, Carter Point Rock, and Seal Rock at the north end of Lummi Island, and subsequently designated areas).

~~12,13.~~ Frequently flooded areas that are subject to the Federal Emergency Management Agency's National Flood Insurance Program Biological Opinion (FEMA BiOp).

~~13,14.~~ Species and Habitats of Local Importance. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:

- a. Species. The Department of Planning and Development Services shall maintain a current list of species of local importance as designated by the County Council.
- b. Habitats.
  - i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the upper limits of the shoreline jurisdiction; provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter.
  - ii. The Chuckanut wildlife corridor, which extends east from Chuckanut Bay and adjacent marine waters, including Chuckanut Mountain, Lookout Mountain, the northern portions of Anderson Mountain, and Stewart Mountain continuing along the southern Whatcom County border to Mount Baker/Snoqualmie National Forest boundary. This area represents the last remaining place in the Puget Trough where the natural land cover of the Cascades continues to the shore of Puget Sound.
  - iii. The Department of Planning and Development Services shall maintain a current list and map of habitats of local importance, as designated by the County Council.

D. In addition to the species, habitats, and wildlife corridors identified in subsection (C)(12) of this section, the Council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:

1. In order to nominate an area, species, or corridor to the category of "locally important," an individual or organization must:
  - a. Demonstrate a need for special consideration based on:
    - i. Identified species of declining population;
    - ii. Documented species sensitive to habitat manipulation and cumulative loss;
    - iii. Commercial, recreational, cultural, biological, or other special value; or
    - iv. Maintenance of connectivity between habitat areas;
  - b. Propose relevant management strategies considered effective and within the scope of this chapter;

- c. Identify effects on property ownership and use; and
  - d. Provide a map showing the species or habitat location(s).
2. Submitted proposals shall be reviewed by the County and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
  3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the County Council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.
  4. The Council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of subsection (D)(1)(a) of this section.

**16.16.720 Habitat Conservation Areas – ~~General standards~~ Use and Modification.**

The following activities may be permitted in habitat conservation areas and/or their buffers when, pursuant to WCC [Chapter 16.16 \(Critical Areas\)](#), ~~255 and 16.16.260,~~ all reasonable measures have been taken to avoid adverse effects on species and habitats, any applicable Washington Department of Fish and Wildlife management recommendations have been applied, mitigation is provided for all adverse impacts that cannot be avoided, and the amount and degree of the alteration are limited to the minimum needed to accomplish the project purpose; provided, that locally important species and habitats shall be subject to WCC ~~16.16.730~~ [16.16.710\(C\)\(12\)](#):

- A. **Reasonable Use.** Developments that meet the reasonable use ~~and or~~ variance standards set forth in WCC [16.16.270](#) and [16.16.273](#), respectively.

**B. Utilities.**

1. ~~New u~~**Utility lines** and facilities may be permitted when all of the following criteria are met:
  - a. The least impactful construction or installation methodology is used as demonstrated through an alternatives analysis.
  - ~~a-b.~~ Impacts to fish and wildlife habitat and/or corridors shall be avoided to the maximum extent possible.
  - ~~b-c.~~ Where feasible, installation shall be accomplished by boring beneath the scour depth of the stream or waterbody and the width of the channel migration zone where present.
  - ~~c-d.~~ Trenching of utilities across a stream channel shall be conducted as perpendicular to the channel centerline as possible whenever boring under the channel is not feasible. Utilities shall be installed below potential scour depth regardless of method.
  - ~~d-e.~~ Crossings shall be contained within the footprint of an existing road or utility crossing where possible.

**Comment [CES64]:** Note: The order of the existing text has been changed to match that in 16.16.620, though not shown in track changes as it would become too confusing.

e-f. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.

**2. On-site sewage disposal systems (OSS) may be permitted in FWHCA buffers when accessory to an approved single-family residence when:**

a. It is not feasible to connect to a public sanitary sewer system; and

b. It is located as far as possible from the FWHCA buffer; and

~~a-c. It is operated and maintained in accordance with WCC 24.05.160; provided, that adverse effects on water quality are avoided.~~may be permitted in nonaquatic HCA buffers and in the outer 50 percent of streams or other aquatic HCA buffers when accessory to an approved residential structure for which there are no alternatives and when it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC Chapter 24.05; provided, that adverse effects on water quality and slope stability are avoided.

**2-3. Domestic wells serving single-family developments (including plats, short plats, and individual single-family residences) and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in HCA buffers when all of the following conditions are met:**

- a. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible;
- b. Any impacts to the HCA buffer from staging equipment and the well-drilling process are mitigated.

**B-C. Stream crossings, provided they meet all the following criteria:**

**1. The stream crossing is for an allowed use.**

~~1-2.~~ There is no other feasible alternative route with less impact on critical areas.

~~2-3.~~ The crossing minimizes interruption of natural processes such as channel migration, the downstream movement of wood and gravel, and the movement of all fish and wildlife. Bridges are preferred for all stream crossings and should be designed to maintain the existing stream substrate and gradient, span the bankfull width, or be proven to not have an appreciable increase in backwater elevation at a minimum of a 100-year event and provide adequate vertical clearance for debris likely to be encountered at high water.

~~3-4.~~ Culverts shall be designed according to applicable state and federal guidance criteria for fish passage as identified in Water Crossing Design Guidelines, WDFW 2013, as amended, and/or the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings, 2000 (and subsequent revisions), and in accordance with a state hydraulic project approval. The applicant or property owner shall maintain fish passage through the bridge or culvert.

~~4-5.~~ The County may require that existing culverts be removed, replaced, or fish passage barrier status corrected as a condition of approval if the culvert is detrimental to fish passage or water quality.

~~5-6.~~ Roadway widths at culvert crossings shall be limited to the minimum width necessary to accommodate the roadway's classification. Culvert length shall be the minimum that is compatible with the roadway width.

~~6.7.~~ Shared common crossings are the preferred approach where multiple properties can be accessed by one crossing.

**D. Private Access.** Access to private development sites may be permitted to cross ~~habitat conservation areasFWHCAs and their buffers if there are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24RCW. Exceptions or deviations from technical standards may be considered by the technical administrator on a case-by-case basis where the resulting outcome reduces overall impacts to any identified critical area.~~

1. ~~If~~There are no feasible alternative alignments. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW.

2. The access is designed to cause the least impact to the habitat conservation area and/or its buffer (which may require the applicant to apply for an exception or deviation from the Development Standards)

~~7.3.~~ Access is not achievable through the administrative provisions of WCC 16.16.740 (Buffer Modification).

Comment [CES65]: Reworded for clarity

**E. Agricultural Uses.** Construction or improvements, other than ~~a~~ buildings, that are associated with an agricultural use in the outer ~~25% percent~~ of the CPAL designated buffer; or the reconstruction, remodeling, or maintenance of such structures in a habitat conservation area buffer, subject to all of the following criteria:

1. The structure is located within an existing lot of record and is an ongoing agricultural use.
2. There is no other feasible location with less impact to critical areas. However, this provision does not apply to the reconstruction, maintenance and/or remodeling of preexisting structures.
3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.
4. Unavoidable adverse effects on critical areas are mitigated in accordance with this chapter.

**F. Stormwater Management Facilities.**

~~D.1.~~ Stormwater management facilities limited to detention/retention/treatment ponds, media filtration, lagoons and infiltration basins may be permitted in a stream buffer, subject to all of the following standards:

- ~~1.a.~~ The facility is located in the outer ~~50% percent~~ of the standard stream buffer and does not displace or impact a forested riparian community;
- ~~2.b.~~ There is no other feasible location for the stormwater facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;
- ~~3.c.~~ The stormwater facility meets applicable county or state stormwater management standards and the discharge water meets state water quality standards; and
- ~~4.d.~~ Low impact development approaches have been considered and implemented to the maximum extent feasible.

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~~E-2.~~ Stormwater conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted in a habitat conservation area buffer on a case-by-case basis when the ~~technical administrator~~ Director determines that all of the following are met:

~~1-a.~~ Due to topographic or other physical constraints, there are no feasible locations for these facilities outside the buffer;

~~2-b.~~ The discharge is located as far from the ordinary high water mark as possible and in a manner that minimizes disturbance of soils and vegetation, except on shoreline slopes where location shall be determined by site characteristics to minimize adverse impacts;

~~3-c.~~ The discharge outlet is designed to prevent erosion and promote infiltration;

~~4-d.~~ The discharge meets freshwater and marine state water quality standards, including the need to evaluate cumulative impacts to 303(d) impaired water bodies and total maximum daily load (TMDL) standards as appropriate at the point of discharge. Standards should include filtration through mechanical or biological means, vegetation retention, timely reseeding of disturbed areas, use of grass-lined bioswales for drainage, and other mechanisms as appropriate within approved stormwater "special districts"; and

~~5-e.~~ The discharge outlet is designed to exclude fish from entering or migrating into stormwater conveyance systems.

~~6-3.~~ Phosphorus-reducing BMP structures approved and installed through the homeowners' improvement program (or as may be renamed) within the Lake Whatcom watershed to treat runoff from existing development may be permitted within fish and wildlife habitat conservation area buffers, provided that they are located the maximum feasible distance from the ordinary high water mark ~~25 feet of the lake shoreline.~~

#### G. Recreation.

~~F-1.~~ Trails. Construction of trails ~~and roadways~~ may be permitted in a habitat conservation area buffer when not directly related to a crossing and are subject to all of the following standards:

~~1-a.~~ There is no other feasible alternative route with less impact on the critical area.

~~2-b.~~ The ~~road or~~ trail minimizes erosion and sedimentation, hydrologic alteration, and disruption of natural processes such as channel migration, wood recruitment and natural wildlife movement patterns.

~~3-c.~~ Private trails shall not exceed four feet in width, and public trails shall not exceed 10 feet in width, though some portions may be wider to meet the requirements of the Americans with Disabilities Act.

d. and They shall be made of pervious material or ~~on an elevated structure~~ where feasible.

e. They shall be designed to avoid removal of significant trees.

~~a-f.~~ Trails may include limited viewing platforms that shall not exceed eight feet in width and shall be made of pervious materials where feasible.

~~4-g.~~ The ~~road or~~ trail through riparian (stream) buffer shall be located in the outer 25% ~~percent~~ of the standard buffer, unless necessary to provide educational opportunities.

~~5-h.~~ The ~~road or~~ trail is constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

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Comment [CES66]: Amended per Scoping Document item #13c

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~~G.2.~~ **Marinas and Launch Ramps.** Construction, reconstruction, repair, and maintenance of marinas and launch ramps may be permitted when consistent with the regulations found in WCC 23.40.060 (Marinas and Launch Ramps ), regardless of whether the proposed project is within shoreline jurisdiction or not.

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~~H.3.~~ **Docks.** Construction, ~~of docks and public launching ramps, and~~ reconstruction, repair, and maintenance of docks ~~and public or private launching ramps~~ may be permitted when consistent with the Army Corps of Engineers' Regional General Permit 6 (Structures in Inland Marine Waters of Washington State) and the regulations found in WCC 23.40.150 (Mooring Structures), regardless of whether or not the proposed project is within shoreline jurisdiction. ~~subject to the following:~~

- ~~1. The dock or ramp is located and oriented and constructed in a manner that minimizes adverse effects on navigation, wave action, water quality, movement of aquatic and terrestrial life, ecological processes, critical saltwater habitats, wetlands, or other critical areas.~~
- ~~2. Docks or ramps on shorelines of the state shall comply with WCC Title 23 and state hydraulic project approval requirements.~~
- ~~3. Natural shoreline processes will be maintained to the maximum extent practicable. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.~~
- ~~4. No net loss to habitat conservation areas or associated wetlands will occur.~~
- ~~5. No net loss of juvenile fish migration corridors will occur.~~
- ~~6. No net loss of intertidal or riparian habitat function will occur.~~

~~4.~~ **Accessory Uses.** When located in the shoreline jurisdiction, residential water-oriented accessory structures may be permitted in an HCA buffer; provided,

- ~~a. They shall be limited to 10% of the buffer's area or 500 square feet, whichever is less; and,~~
- ~~b. No more than 20% of the linear length of shoreline is occupied by a building or structure; and~~
- ~~c. The shoreline is 75% planted (or replanted) with native vegetation to a minimum depth of 15 feet landward from the ordinary high water mark.~~

**Comment [CES67]:** Policy Change. This allows for some uses at the water's edge while meeting no net loss.

~~H.4.~~ **Relocation of streams,** or portions of streams, when there is no other feasible alternative and when the relocation will result in equal or better habitat and water quality and quantity, and will not diminish the flow capacity of the stream or other natural stream processes; provided, that the relocation meets state Hydraulic Project Approval requirements and that relocation of shoreline streams shall be prohibited unless the relocation has been identified formally by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement or identified in watershed planning documents prepared and adopted pursuant to Chapter 90.82 RCW, the WRIA 1 Salmonid Recovery Plan, or the WRIA 1 Watershed Management Board Habitat Project List, or the County's Shoreline Restoration Plan.

~~J.1.~~ **Clearing and grading,** when allowed as part of an authorized activity or as otherwise allowed in these standards, may be permitted; provided, that the following shall apply:

1. Grading is allowed only during the designated dry season, which is typically regarded as May to October of each year; provided, that the County may extend or shorten the designated dry

season on a case-by-case basis, based on actual weather conditions. Special scrutiny shall be given to Lakes Samish, Padden, and Whatcom watersheds, and water resource special management areas as described in WCC [20.80.735](#).

2. Appropriate erosion and sediment control measures shall be used at all times, consistent with best management practices in the Department of Ecology's Stormwater Management Manual for Western Washington. The soil duff layer shall remain undisturbed to the maximum extent possible. Where feasible, disturbed topsoil shall be salvaged and/or redistributed to other areas of the site. Areas shall be revegetated as needed to stabilize the site.
3. The moisture-holding and infiltration capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.

K.J. ~~Shoreline Streambank Stabilization and shoreline protection~~ may be permitted when consistent with the shoreline stabilization regulations found in 23.40.190 (Shoreline Stabilization), regardless of whether the proposed project is within shoreline jurisdiction or not, subject to all of the following standards:

- ~~1. The stabilization or protection measures shall be designed in accordance with the techniques contained within the Washington Department of Fish and Wildlife's most recent Integrated Streambank Protection Guidelines. Deviation from these techniques requires written justification from a qualified professional/engineer.~~
- ~~2. Natural shoreline processes will be maintained to the maximum extent practicable.~~
- ~~3. The activity will not result in increased erosion and will not alter the size or distribution of shoreline or stream substrate, or eliminate or reduce sediment supply from feeder bluffs.~~
- ~~4. Stream and shoreline protection and launching ramps on shorelines of the state shall comply with WCC Title 23 and with state hydraulic project approval requirements.~~
- ~~5. No net loss to habitat conservation areas or associated wetlands will occur.~~
- ~~6. No net loss of juvenile fish migration corridors will occur.~~
- ~~7. No net loss of intertidal or riparian habitat function will occur.~~
- ~~8. Nonstructural measures, such as placing or relocating the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not practicable or not sufficient.~~
- ~~9. Stabilization is achieved through bioengineering or soft armoring techniques in accordance with an applicable hydraulic permit approval issued by the Washington State Department of Fish and Wildlife.~~
- ~~10. Hard bank armoring is discouraged and may occur only when the property contains an existing permanent structure(s) that is in danger from shoreline erosion caused by wave action or riverine processes and not erosion caused by upland conditions, such as the alteration of natural vegetation or drainage, and the armoring shall not increase erosion on adjacent properties and shall not eliminate or reduce sediment supply. An objective alternatives analysis, addressing upstream and downstream impacts, shall be conducted to demonstrate that there is no other less environmentally damaging alternative to the more impacting proposed action.~~

~~11. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not a demonstration of need.~~

~~12. The bank stabilization or shore protection will not adversely affect habitat conservation areas or mitigation will be provided to compensate for adverse effects where avoidance is not feasible.~~

~~L.K.~~ **New Public Flood Protection Measures** and expansion of existing ones may be permitted, subject to WCC Title 17, Article 4 of this chapter and a state hydraulic project approval; provided, that bioengineering or soft armoring techniques shall be used where feasible. Hard bank armoring may occur only in situations where soft approaches do not provide adequate protection.

**L. In-stream structures** such as, but not limited to, high-flow bypasses, dams, and weirs, shall be allowed only as part of a watershed restoration project as defined pursuant to WCC ~~Title 23-110-230(10)~~ or identified in watershed planning documents prepared and adopted under Chapter 90.82 RCW, the salmonid recovery plan or watershed management board habitat project list, and the County's shoreline restoration plan and upon acquisition of any required state or federal permits. The structure shall be designed to avoid adverse effects on stream flow, water quality, or other habitat functions and values.

~~M. Single family developments may be permitted to encroach into stream buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(B) are met.~~

~~N.M.~~ All other development may be allowed in shellfish protection districts outside of actual shellfish habitats with a valid development project permit and when the requirements of subsection O of this section are met.

~~O.N.~~ Alteration or removal of **beaver-built structures** more than two years old; provided, that:

1. The property owner can show that the beaver dam is harming or likely to harm his or her property.
2. It has been demonstrated that beaver deceivers or auto leveler devices cannot appropriately resolve ponding/backwatering that is negatively affecting adjacent land or property.
3. Impacts to wetland, river, or stream functions are minimized and mitigation is provided to compensate for lost ecological value.
4. The property owner obtains an HPA from WDFW prior to initiating alteration or removal of the beaver-built structure.
5. The property owner provides a copy of the HPA to the ~~technical administrator~~ **Director**.

~~P.O.~~ On Eliza Island, applicants shall complete the U.S. Fish and Wildlife Service (USFWS) self-assessment (<https://www.fws.gov/pacific/eagle/>) to determine whether a USFWS bald eagle permit is needed and, if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the National Bald Eagle Guidelines.

**P. Timber Removal.**

1. To allow for greater flexibility in a development proposal when an application has been submitted for a Conversion Option Harvest Plan (COHP) or a Class IV General FPA, an applicant has the opportunity to remove timber within the standard buffers if the applicant's mitigation measures incorporate all of the performance standards based upon water type listed in Table 3. In conformance with professional standards used by the Washington Department of Natural Resources for forest practices in sensitive areas, all removal of timber within HCA buffers shall

**Comment [CES68]:** Not needed. 16.16.270 would apply to any type of development and is covered by (A)

**Comment [CES69]:** Borrowed from Skagit County, this section would allow timber harvesting to occur w/in buffers while still retaining the HCA's functions. This is aimed at closing a loophole wherein applicants remove timber before applying for a development permit, which is when the CAO becomes applicable (the CAO is not applicable to forest practices except for Class IV Conversions).

be subject to conditions specified by the Director in conjunction with an on-site technical team review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian tribes is solicited.

2. The intent of this section is to provide an additional opportunity for an applicant to propose some level of timber removal within the riparian habitat zone, as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the Director will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.
3. The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service's most recent Soil Survey of Whatcom County. In consultation with a representative from the Natural Resource Conservation Service, Soil Conservation District, or professional forester, the applicant will determine the capability of the site for woodland management, using the most suitable tree species according to the soil survey, and establish the stand characteristics that would be expected from a mature stand of those species established on site:
4. If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For Type S streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer:

**Table 3. Performance-Based Riparian Standards\***

<b>Watertype</b>	<b>Performance Standards</b>
<u>Type S</u>	<p><u>Maintain 95% of total LWD recruitment expected to enter freshwater stream(s) from a mature stand; and</u></p> <p><u>Maintain 85% of the trees which are greater than 24 inches DBH within 100 feet of the water(s); and</u></p> <p><u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u></p> <p><u>The applicant may further request some limited timber harvest of up to 30% of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:</u></p> <ul style="list-style-type: none"> <li><u>(a) Does not reduce the LWD and canopy requirements; and</u></li> <li><u>(b) The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50% of the total number of trees with 25% of the total trees left having a diameter at breast height (DBH—4-1/2 feet) greater than 12 inches; and</u></li> <li><u>(c) No more than 50% of the dominant trees in the outer 100 feet may be harvested.</u></li> </ul>
<u>Type F</u>	<p><u>Maintain 85% of total LWD recruitment expected to enter freshwater stream(s) from a mature stand; and</u></p>

<u>Watertype</u>	<u>Performance Standards</u>
	<u>Maintain 85% of the trees which are greater than 18 inches DBH within 100 feet of the water(s); and</u> <u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u>
<u>Types Np and Ns</u>	<u>Maintain 50% of total LWD recruitment expected to enter freshwater stream(s) from a mature stand; and</u> <u>Maintain 85% of the trees which are greater than 24 inches DBH within 50 feet of the water(s); and</u> <u>Maintain an average of 75% canopy cover (based on canopy densitometer readings at the water(s) edge).</u>

\* Note: These standards must be exceeded before additional activity can be permitted within the riparian zone. Applicants electing to employ performance-based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.

#### ~~16.16.730 Locally Important Habitats and Species—Standards.~~

~~Alterations that occur within a locally important habitat area or that may affect a locally important species as defined herein shall be subject to review on a case-by-case basis. The technical administrator shall have the authority to require an assessment of the effects of the alteration on species or habitats and may require mitigation to ensure that unmitigated adverse effects do not occur. This standard is intended to allow for flexibility and responsiveness with regard to locally important species and habitats.~~

Comment [CES70]: Moved to 16.16.740(B)(2))

#### **16.16.740-730 Habitat Conservation Area Buffers—Standards.**

In addition to the applicable general protective measures found in WCC [16.16.265](#) and [16.16.720](#), the ~~technical administrator~~ Director shall have the authority to require buffers from the edges of all habitat conservation areas ~~(in addition to the building setback required by 16.16.265(D))~~ in accordance with the following:

##### **A. General.**

~~A.1.~~ 1. Buffers shall be established for activities adjacent to habitat conservation areas as necessary to protect the integrity, functions, and values of the resource. Buffer widths shall reflect the sensitivity of the species or habitat present and the type and intensity of the proposed adjacent human use or activity. Buffers shall not include areas that are functionally and effectively disconnected from the wetland by an existing, legally established road or other ~~that are functionally and effectively disconnected from the habitat area by of an existing, legally established road or other~~ substantially ly developed surface.

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##### **B. Stream Buffers.**

~~B.2.~~ 2. The standard buffer widths required by this Article are considered to be the minimum required and presume the existence of a dense vegetation community in the buffer zone adequate to protect the ~~stream-ecological~~ functions and values at the time of the proposed activity. When a buffer lacks adequate vegetation to protect critical area functions, the ~~technical administrator~~

Comment [P/C71]: P/C moved to retain existing language. Passed 4-3

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Director may increase the standard buffer, require buffer planting or enhancement, and/or deny a proposal for buffer reduction or buffer averaging.

3. The standard buffer shall be measured landward horizontally from the edge of the ordinary high water mark as identified in the field. The required buffer shall be extended to include any abutting regulated wetland(s), landslide hazard areas, and/or erosion hazard areas and required buffers.

1-4. For streams, the standard buffer is measured on both sides of the stream from the ordinary high water on both sides of the stream mark as identified in the field; provided, that for streams with identified channel migration zones, the buffer shall extend outward horizontally from the outer edge of the channel migration zone on both sides. The required buffer shall be extended to include any abutting regulated wetland(s), landslide hazard areas and/or erosion hazard areas and required buffers, but shall not be extended across roads or other lawfully established structures or hardened surfaces.

2. The following standard buffer width requirements are established:

- a. Shoreline streams: 150 feet;
- b. Fish-bearing streams: 100 feet;
- c. Non-fish-bearing streams: 50 feet.

3-5. Portions of streams that flow underground may be exempt from these buffer standards at the technical administrator. Director's discretion when it can be demonstrated that no adverse effects on aquatic species will occur.

#### B. Buffers for Other Habitat Conservation Areas Buffer Widths.

1. Standard buffer widths for habitat conservation areas shall be as identified in Table 4.

2. For habitat conservation areas not listed in Table 4, including those of locally important habitats and species and State priority habitats and areas with which federally listed or state priority species have a primary association, minimum buffers shall be based on habitat a management plan prepared pursuant to WCC 16.16.750. The technical administrator shall determine appropriate buffer widths for other habitat conservation areas. The Director shall have the authority to require a critical area assessment report and/or habitat management plan (HMP) pursuant to WCC 16.16.750, and may require mitigation to ensure that unmitigated adverse effects do not occur, based on the best available information. Buffer widths for non-stream habitat conservation areas shall be as identified in Table 3:

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**Comment [CES72]:** Moved to Table 4

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Table 4. Buffer Requirements for HCAs

Habitat Conservation Area	Buffer Requirement
Type S – Freshwater	200 feet
Type S – Marine	150 feet
Type F – Lake	100 feet
Type F – Stream	150 feet
Type Np	50 feet

**Comment [CES73]:** Policy change: 200' is the Court recommended based on National Wildlife Federation v. FEMA (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472)

Habitat Conservation Area	Buffer Requirement
Type Ns	50 feet
manmade ponds identified in 16.16.710(D)(10)	25 feet, unless otherwise approved through an Habitat Management Plan pursuant to subsection (B)(2), above, or a Conservation Farm Plan pursuant to Article 8
Areas with which federally listed species have a primary association State priority habitats and areas with which priority species have a primary association	Minimum buffers shall be based on recommendations provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise. When there are no state recommendations or species management guidelines then only the building setback (WCC 16.16.265) shall be applied.
Critical saltwater habitats	Buffers shall extend 150 feet landward from ordinary high water mark of the marine shore. Buffers shall not be required adjacent to shellfish protection districts, but only in nearshore areas where shellfish reside.
Natural ponds and lakes	Ponds under 20 acres — Buffers shall extend 50 feet from the ordinary high water mark. Lakes 20 acres and larger (which are subject to WCC Title 23) — Buffers shall extend 100 feet from the ordinary high water mark; provided, that where vegetated wetlands are associated with the shoreline, the buffer shall be based on the wetland buffer requirements in WCC 16.16.630.
Natural area preserves and natural resource conservation areas	Buffers shall not be required adjacent to these areas. These areas are assumed to encompass the land required for species preservation.
Locally important habitat areas	The buffer for marine nearshore habitats shall extend landward 150 feet from the ordinary high water mark. The need for and dimensions of buffers for other locally important species or habitats shall be determined on a case-by-case basis, according to the needs of the specific species or habitat area of concern. Buffers shall not be required adjacent to the Chuckanut wildlife corridor. The technical administrator shall coordinate with the Washington State Department of Fish and Wildlife and other state, federal or tribal experts in these instances, and may use WDFW PHS management recommendations when available.

Comment [CES74]: Now covered by subsection (B)(2)

Comment [CES75]: Now covered by the water types, above.

Comment [CES76]: Now covered by the water types, above.

Comment [CES77]: Now covered in subsection (B)(2)

#### **16.16.740 Habitat Conservation Area Buffer Modification.**

Buffer widths may be increased, decreased, or averaged in accordance with the following provisions, which provide flexible approaches to maximize both ecological functions and allowed uses. All mitigation proposed shall be consistent this Chapter.

A. **Buffer Width Increasing.** The Director may require the standard buffer width to be increased or to establish a non-riparian buffer, when such buffers are necessary for one of the following:

1. To protect priority fish or wildlife using the HCA.
2. To provide connectivity when a Type S or F waterbody is located within 300 feet of:
  - a. Another Type S or F water body; or
  - b. A fish and wildlife HCA; or
  - c. A Category I, II or III wetland;
3. ~~€~~To comply with the requirements of a habitat management plan prepared pursuant to WCC 16.16.750.
4. ~~P~~To protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate ~~stream~~water temperatures, or maintain in-~~stream~~water conditions.
5. ~~€~~To compensate for degraded vegetation communities, Clean Water Act 303(d) impaired water bodies, or steep slopes adjacent to the habitat conservation area.
6. ~~M~~To maintain areas for channel migration and/or frequently flooded areas.
7. ~~P~~To protect adjacent or downstream ~~gradient~~ areas from erosion, landslides, or other hazards.
8. ~~P~~To protect ~~streams~~waters from high intensity adjacent land uses.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

B. **Buffer Width Averaging.**

1. Buffer width averaging allows limited reductions of buffer width in specified locations while requiring increases in others. Averaging of required buffer widths shall be allowed only where the applicant demonstrates that all of the following criteria are met:
  - a. The buffer has not been reduced pursuant to subsection (C). Buffer averaging is not allowed if the buffer has been reduced.
  - b. Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available due to site constraints caused by existing physical characteristics such as slope, soils, or vegetation; and
  - c. The habitat contains variations in sensitivity due to existing physical characteristics; and
  - d. Averaging will not adversely impact the functions and values of fish and wildlife conservation areas; and
  - e. Averaging meets performance standards for protecting fish species; and
  - f. The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
  - g. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30% ~~percent~~; and;
  - h. The buffer width shall not be reduced below 75% of the standard buffer width.
2. In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.

**C. Buffer Width Reduction.**

1. The Director shall have the authority to reduce buffer widths on a case-by-case basis; provided, that the general standards for alternatives analysis and mitigation sequencing per WCC 16.16.260 have been applied, and when the applicant demonstrates to the satisfaction of the Director that all of the following criteria are met:
  - a. The buffer has not been averaged pursuant to subsection (B). Buffer reduction is not allowed if the buffer has been averaged.
  - b. The applicant demonstrates buffer averaging is not feasible.
  - c. The buffer shall not be reduced to less than 75% percent of the standard buffer specified in Table 4Table 3.
  - d. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30% percent (see Article 3 of this chapter).
  - e. The applicant has demonstrated application of mitigation sequencing as required in WCC 16.16.260 (General Mitigation Requirements).
  - f. To minimize impacts and provide equivalent functions and values as required by this section, the Director may require any or all of the following:
    - i. The use of alternative on-site wastewater systems in order to minimize site clearing, where appropriate;
    - ii. Using low impact development (LID) and LID best management practices where appropriate;
    - In order to offset habitat loss from buffer reduction, retaining existing native vegetation on other portions of the site equal to no more than the area impacted.
  - g. All buffer reduction impacts are mitigated and result in equal or greater protection of the HCA functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.
2. In all circumstances when the buffer between the area of reduction and the wetland is degraded, this degraded portion of the buffer shall include replanting with native vegetation in order to achieve a dense vegetative community.

**D. Buffer Width Variance.** Standard buffer widths may be reduced by more than 25% through a variance pursuant to WCC 16.16.273 (Variances); provided, that buffer averaging beyond that allowed in subsection (B) is prohibited.

**E.** The technical administrator shall have the authority to reduce buffer widths on a case-by-case basis; provided, that the general standards for alternatives analysis and mitigation sequencing per WCC 16.16.260 have been applied, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:

1. The buffer reduction shall not adversely affect the habitat functions and values of the adjacent habitat conservation area or other critical area.
- ~~2.1. The buffer shall not be reduced to less than 75 percent of the standard buffer specified in Table 3.~~
- ~~3.1. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30 percent (see Article 3 of this chapter).~~

**Comment [P/C78]:** P/C motion to strike. Carries 7-1-1

**Comment [P/C79]:** P/C motion to approve. Carries 9-0

4. The area that has been reduced shall be mitigated at least at a ratio of 1:1, on an area basis.

F. The technical administrator shall have the authority to average buffer widths on a case-by-case basis; provided, that the general standards for avoidance and minimization per WCC 16.16.260(A)(1)(a) and (b) shall apply, and when the applicant demonstrates to the satisfaction of the technical administrator that all of the following criteria are met:

1. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer and all increases in buffer dimension are parallel to the habitat conservation area.
2. The buffer averaging does not reduce the functions or values of the habitat conservation area or riparian habitat, or the buffer averaging, in conjunction with vegetation enhancement, increases the habitat function.
3. The buffer averaging is necessary due to site constraints caused by existing physical characteristics such as slope, soils, or vegetation.
4. The buffer width is not reduced to less than 75 percent of the standard width specified in Table 3.

~~5.1. The slopes adjacent to the habitat conservation area within the buffer area are stable and the gradient does not exceed 30 percent.~~

6. Where a buffer has been reduced, the technical administrator may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.

G. **Buffer Increases.** The technical administrator shall have the authority to increase the width of a habitat conservation area buffer on a case-by-case basis when there is clear evidence that such increase is necessary to achieve any of the following:

~~1. Comply with the requirements of a habitat management plan prepared pursuant to WCC 16.16.750.~~

~~2.1. Protect fish and wildlife habitat, maintain water quality, ensure adequate flow conveyance, provide adequate recruitment for large woody debris, maintain adequate stream temperatures, or maintain in-stream conditions.~~

~~3.1. Compensate for degraded vegetation communities, Clean Water Act 303(d) impaired water bodies, or steep slopes adjacent to the habitat conservation area.~~

~~4.1. Maintain areas for channel migration and/or frequently flooded areas.~~

~~5.1. Protect adjacent or downstream areas from erosion, landslides, or other hazards.~~

~~6.1. Protect streams from high intensity adjacent land uses.~~

#### **16.16.750 Habitat Conservation Areas – Review and Reporting Requirements.**

A. When County critical area maps or other sources of credible information indicate that a site proposed for development or alteration is more likely than not to contain habitat conservation areas or buffers, or could adversely affect a habitat area or buffer, the ~~technical administrator~~ Director shall require a site evaluation (field investigation) by a qualified professional or other measures to determine whether or not the species or habitat is present. If no habitat conservation areas are present, then review will be considered complete. If the site evaluation determines that the species

or habitat is present, the ~~technical administrator~~ Director shall require a critical areas assessment report or habitat management plan (HMP), except; provided, that

1. No report or evaluation shall be required for developments outside of buffers within the upland portions of shellfish conservation areas.
2. The ~~technical administrator~~ Director shall have the authority to waive the report requirement when he/she determines that the project is a single-family building permit development that involves less than one-half acre of clearing and/or vegetation removal and will not directly disturb the species, or specific areas or habitat features that comprise the habitat conservation area (nest trees, breeding sites, etc.) as indicated by a site plan or scaled drawing of the proposed development.

B. In addition to the reporting requirements of WCC [16.16.255](#), the habitat conservation area assessment report/HMP shall describe the characteristics of the subject property and adjacent areas, including condition, quality, function, and values of the habitat conservation area at a scale appropriate to the function being evaluated (see WAC [365-196-830\(6\)](#)). The assessment shall include determination of appropriate buffers as set forth in WCC [16.16.740](#). The assessment shall also include field identification and/or delineation of habitat areas, analysis of historical aerial photos, and review of public records as necessary to determine potential effects of the development action on critical areas. Assessment reports shall include the following site- and proposal-related information unless the ~~technical administrator~~ Director determines that any portion of these requirements is unnecessary given the scope and/or scale of the proposed development:

1. A map drawn to a common scale or survey showing the following information:
  - a. Topographic, hydrologic, and vegetative features.
  - b. The location and description of wildlife and habitat features, and all critical areas on or within 200 feet of the site, or farther, given the scale appropriate to the function being evaluated.
  - c. Proposed development activity.
  - d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.
  - e. Surrounding land uses and zoning (to ensure appropriate buffer).
2. An analysis, including an analysis of cumulative impacts, of how the proposed development activities will affect the fish and wildlife habitat conservation area and/or buffer, including the area of direct disturbance; effects of stormwater management; effects on any 303(d) impaired water bodies; proposed alteration to surface or subsurface hydrology; natural drainage or infiltration patterns; clearing and grading impact; temporary construction impacts; effects of increased intensity of use (including noise, light, human intrusion, etc.).
3. Provisions to reduce or eliminate adverse impacts of the proposed development activities on the functions and values of the habitat conservation area including, but not limited to:
  - b. Buffering;
  - c. Clustering of development;
  - d. Retention of native vegetation;
  - e. Access limitations;

- f. Seasonal restrictions on construction activities in accordance with the guidelines developed by the Washington State Department of Fish and Wildlife, the U.S. Army Corps of Engineers, the salmonid recovery plan and/or other agency or tribe with expertise and jurisdiction over the subject species/habitat; and
  - g. Other appropriate and proven low impact development techniques.
4. Management recommendations developed by WDFW through its Priority Habitat and Species program.
  5. Additional information including, but not limited to, direct observations of species use or detailed physical and biological characteristics both on and off site at an appropriate scale (see WAC [365-196-830\(6\)](#)). The assessment of off-site conditions shall be based on available information and shall not require accessing off-site properties.
  6. Applicants near a bald eagle nest shall complete the U.S. Fish and Wildlife Service (USFWS) self-assessment (<https://www.fws.gov/pacific/eagle>) to determine whether a USFWS bald eagle permit is needed, and if so, apply for one. Development activities near bald eagle habitat shall be carried out consistent with the National Bald Eagle Guidelines.
- C. All habitat management plans ~~shall~~should be prepared in consultation with the State Department of Fish and Wildlife and/or other federal, state, local or tribal resource agencies with jurisdiction and expertise in the subject species/habitat, and shall contain a review of the most current best available science applicable to the subject species/habitat.
- D. For single-family building permits, the applicant may hire a qualified professional to prepare the assessment report or may request that the County assess the regulated wetland(s) and buffers and determine the impacts associated with the project, subject to the following: At the request of the applicant, the County may gather the required information in this section for applicants seeking to develop a single-family home; provided, that:
1. Availability of County staff shall be at the discretion of the ~~technical administrator~~ Director and subject to workload and scheduling constraints.
  2. Fees for County staff services shall be in accordance with the unified fee schedule.

#### **16.16.760 Habitat Conservation Areas – Mitigation Standards.**

Activities that adversely affect habitat conservation areas and/or their buffers as determined by the ~~technical administrator~~ Director shall include mitigation sufficient to achieve no net loss of habitat functions and values or an ecological lift in accordance with WCC [16.16.260](#) and this section.

- A. In determining the extent and type of mitigation required, the technical administrator may consider all of the following:
1. The ecological processes that affect and influence critical area structure and function within the watershed or sub-basin;
  2. The individual and cumulative effects of the action upon the functions of the critical area and associated watershed;
  3. Observed or predicted trends regarding the gains or losses of specific habitats or species in the watershed, in light of natural and human processes;
  4. The likely success of the proposed mitigation measures;

**Comment [PDS80]:** An approved habitat management plan may require a lift to comply.

5. ~~Effects of the mitigation actions on neighboring properties; and~~
6. ~~Opportunities to implement restoration actions formally identified by an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the watershed management board habitat project list or by the Washington State Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.~~

Comment [CES81]: Moved to 16.16.260 General Mitigation Requirements

~~B. The following additional mitigation standards shall apply:~~

~~B. Mitigation for alterations to habitat areas shall achieve equivalent or greater biologic functions, and shall provide similar functions to those that are lost or altered.~~

~~C.A.~~ Mitigation in the form of habitat restoration or enhancement is required when a habitat is altered permanently as a result of an approved project. Alterations shall not result in net loss of habitat.

1. ~~Where feasible, mitigation projects shall be completed prior to activities that will disturb habitat conservation areas. In all other cases, mitigation shall be completed as quickly as possible following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fish, wildlife and flora; provided, that the technical administrator may adjust the timing requirements to allow grading, planting, and other activities to occur during the appropriate season(s).~~

Comment [CES82]: Moved to 16.16.260 General Mitigation Requirements

2. ~~Mitigation shall be provided on site whenever feasible. Off-site mitigation in a location that will provide a greater ecological benefit to the species and/or habitats affected and have a greater likelihood of success may be accepted at the discretion of the technical administrator. Mitigation shall occur as close to the impact site as possible. As mitigation is moved further away from the impacted habitat, the technical administrator may increase the amount of mitigation required. If off-site mitigation is proposed, the applicant must demonstrate through an alternatives/mitigation sequencing analysis (WCC 16.16.260) that the mitigation will have greater ecological benefit.~~

Comment [CES83]: Now covered by 16.16.260(D)

~~D.B.~~ All mitigation sites shall have buffers consistent with the buffer requirements established in WCC 16.16.740; provided, that the ~~technical administrator~~ Director shall have the authority to approve a smaller buffer when existing site constraints (such as a road) prohibit attainment of the standard buffer. Mitigation actions shall not create buffer encumbrances on adjoining properties.

3. ~~The technical administrator shall require annual monitoring of mitigation activities and submittal of annual monitoring reports in accordance with WCC 16.16.260(C) to ensure and document that the goals and objectives of the mitigation are met. Monitoring shall be for a period of up to five years.~~

Comment [CES84]: Covered by 16.16.260(I)(2).

~~E.C.~~ Mitigation projects involving in-stream water work including, but not limited to, installation of large woody debris shall be designed to ensure there are no adverse hydraulic effects on ~~upstream-up-~~ or ~~downstream-downgradient~~ properties. The County Public Works River and Flood Division shall review any such mitigation projects for compliance with this provision.

~~D.~~ As applicable, apply mitigation standards of the Army Corps of Engineer Regional General Permit 6 for inland marine waters as amended February 12, 2020.

Comment [CES85]: Added for consistency with RGP-6

~~F.E.~~ On a case-by-case basis, the technical administrator shall have the authority to require mitigation ~~For permanent impacts to a habitat conservation areas or their buffers, mitigation shall be provided at the following ratios, unless the Director approves a habitat management plan with greater ratios:~~

1. Where the mitigation is in place and functional before the impacts occur (i.e., advanced mitigation), at a ratio determined by the functions, values, and goals of an advanced mitigation plan, at a 1:1 ratio (area or function).
2. Where the mitigation is in place within 1 year of the impact occurring, at a 1:1 ratio (area or function). Where the mitigation is placed after the impact occurs, at a 1.25:1 ratio (area or function); and
- ~~2.3.~~ Where the mitigation is placed after 1 year of the impact occurring, at a 1.25:1 ratio (area or function).
4. For retroactive permits the Director may require the ratio shall be up to double the ratio in subsection (3) above.

**Comment [P/C86]:** P/C motion to amend as shown. Passes 7-0

## **Article 8. Conservation Program on Agriculture Lands (CPAL)**

### **16.16.800 Purpose.**

- A. The well-being of farms and ranches in Whatcom County depends in part on good quality soil, water, air, and other natural resources. Agricultural operations that incorporate protection of the environment, including critical areas and their buffers as defined by this chapter, are essential to achieving this goal.
- B. The purpose of the CPAL program is to allow farmers practicing ongoing agricultural activities that may affect critical areas, their functions and values, and/or their buffers to do so either (1) in accordance with the standard requirements of this chapter or (2) pursuant to a conservation farm plan voluntarily prepared and approved pursuant to this article. If farmers and ranchers are willing to enter into the CPAL program, then flexibility in these provisions may be extended to them. If not, then they must observe the standard provisions of this chapter.
- C. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter.

### **16.16.810 Resource Concerns.**

Agricultural operations, including the keeping of horses and other large animals, have the potential to create adverse impacts to critical areas. It is the County's policy to minimize such impacts.

- A. **Nutrient Pollution of Water.** Animal waste contains nutrients (nitrogen and phosphorous). With each rain, these wastes can wash off the land and into the nearest stream, lake, or wetland. In surface water, phosphorous and nitrogen fertilize aquatic plants and weeds. As the plants and weeds proliferate and decay, the dissolved oxygen that fish need to survive is depleted. Nitrogen in the form of nitrate is easily dissolved in and carried with rainfall through our permeable soils to groundwater. Nitrate concentrations exceeding the maximum contaminate level for safe drinking water are found in many wells of Whatcom County. These can present a significant human health risk, particularly to the very old and young.
- B. **Pathogen Pollution of Water.** Manure contains bacteria and other pathogens. These can make the water unfit for drinking without treatment or shellfish unfit for human consumption. They can also make water unsafe for human contact and recreational sports such as fishing, swimming or water skiing. Both surface and groundwater are vulnerable to this type of pollution.
- C. **Sediment Pollution to Surface Water.** Regardless of the amount of supplemental feed provided, large animals will continue grazing until all palatable vegetation is gone. On especially small lots (one or two acres), the animals that are allowed free and continuous access to vegetation quickly graze-out and trample pasture grasses and forbs. These areas are then susceptible to invasion by weeds, including noxious weeds, and brush. The resulting bare ground is subject to erosion from wind and water. Lands that lack adequate vegetation are subject to erosion, and contaminated runoff from these areas can enter water bodies and wetlands and interfere with fish and wildlife habitat.
- D. **Degradation of Riparian Areas.** The term "riparian" is defined in Article 9 of this chapter and includes the areas adjacent to streams, lakes, marine shorelines and other waters. A healthy riparian area is essential to protecting fish and wildlife, including salmon and shellfish. Dense riparian vegetation

along the water's edge will slow and protect against flood flows; provide infiltration and filtering of pollutants; secure food and cover for fish, birds and wildlife; and keep water cooler in summer. If it occurs, uncontrolled grazing has the potential to remove important riparian vegetation.

**16.16.820 Classification and Applicability.**

- A. A conservation farm plan identifies the farming or ranching activities and the practice(s) necessary to avoid their potential negative impacts (resource concerns). Practice selection depends upon the types of livestock raised and crops grown. Based upon the type and intensity of the operation, some generalizations can be made as to the resource concerns and remedies that apply.
- B. Some operations present relatively low risks to critical areas because of their benign nature, timing, frequency, or location. For these operations, the resource concerns and remedies are relatively easy to identify and implement. These are described in more detail as Type 1 agricultural operations subject to standardized conservation farm plans in WCC [16.16.830](#) and [16.16.840\(A\)](#).
- C. Where the potential negative impacts to critical areas are moderate or high, solutions are more difficult to formulate and implement. In those circumstances, a more rigorous planning process is required. In such cases, a formal written plan shall provide the desired environmental protection. These types of operations are described as agricultural operations requiring custom conservation farm plans in WCC [16.16.830](#) and [16.16.840\(B\)](#) or (C).
- D. Agricultural activities that qualify for coverage include:
  - 1. Type 1 Operations.
    - a. To qualify as a Type 1 operation, a farm shall not exceed one animal unit per one acre of grazable pasture. These operations present a low potential risk to critical area degradation including ground/surface water contamination because the animals kept generate fewer nutrients than can be used by the crops grown there.
    - b. Critical areas on Type 1 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840\(A\)](#).
    - c. Those operators qualifying for a Type 1 (standard) conservation farm plan may elect to do a Type 2 (custom) conservation farm plan if they want to use "Prescribed Grazing" (NRCS Practice 528A) to manage vegetative filter strips installed alongside critical areas.
  - 2. Type 2 Operations.
    - a. Type 2 operations are farms that include, but are not limited to, those that exceed one animal unit per one acre of grazable pasture; farms that have orchards, vineyards, small-fruit field or row crops; and drainage improvement districts. These operations present a potential moderate risk to critical area degradation, including ground or surface water contamination, because the nutrients applied from manure or commercial fertilizers may exceed that which can be easily used by the crops grown there without careful planning and management. The agricultural activities are also likely to be much more intense than Type 1 operations, posing greater potential risks to other critical areas.

- b. Critical areas on Type 2 operations are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840](#)(B).
- 3. Type 3 Operations.
  - a. Type 3 operations include dairies and animal feeding operations/concentrated animal feeding operations (AFO/CAFOs). These operations are already regulated by state and federal governments (see Chapter [90.64](#) RCW et seq.; [40](#) CFR [122.23](#) and [40](#) CFR Part 412).
  - b. Critical areas are protected against the potential negative impacts of Type 3 agricultural activities through the implementation of an approved custom conservation farm plan prepared in accordance with WCC [16.16.830](#) and [16.16.840](#)(C).

**16.16.830 Conservation Farm Plans – General Standards.**

- A. All conservation farm plans shall include all practicable measures, including best management practices, to maintain existing critical area functions and values.
- B. A conservation farm plan shall not recommend nor authorize:
  - 1. Filling, draining, grading, or clearing activities within critical areas or buffers:
    - a. Except on ongoing agricultural land where such activities are a demonstrated essential part of the ongoing agricultural use or part of routine maintenance; and
    - b. When it does not expand the boundaries of the ongoing agricultural use; and
    - c. The appropriate permits for doing so have been obtained.
  - 2. The construction of new structures. New structures shall be constructed in compliance with the applicable standard requirements of this chapter and the Whatcom County Code.
  - 3. New or expanded drainage systems. Routine maintenance of existing drainage systems may be allowed, but only in compliance with the Washington State Hydraulic Code (Chapter [220-660](#) WAC) and the best management practices found in the “Drainage Management Guide for Whatcom County Drainage Improvement Districts.”
  - 4. The conversion of land to agricultural use.
- C. Other plans prepared for compliance with state or federal regulations (e.g., nutrient management plans), or to obtain an accredited private third-party certification (e.g., GLOBALG.A.P.), or similar plans may be used as part of or in lieu of a conservation farm plan if the ~~technical administrator~~ [Director](#) determines they adequately address the requirements of this title.

**16.16.840 Conservation Farm Plan Requirements.**

- A. **Type 1 (Standard) Conservation Farm Plans.** Owners of Type 1 operations have limited options to control animal waste because their operations are small. The required conservation farm plan can be prepared by the landowner and include a simple map of the property, a standard checklist designed to protect water quality, and the following additional components:
  - 1. System Siting and Design. Barns, corrals, paddocks, or lots are to be sited to avoid runoff directly into critical areas.
    - a. Where structures exist in critical areas or buffers and cannot be relocated, corrective measures must be taken if necessary to avoid runoff of pollutants and bacteria to critical areas.

b. Along regulated streams<sup>2</sup>, lakes, ponds, or wetlands:

- i. Where trees and shrubs already exist, they shall be retained and managed to preserve the existing functions of the buffer pursuant to the USDA Natural Resource Conservation Service's (NRCS) Conservation Practice 391, "Riparian Forest Buffer."
- ii. Where trees and shrubs are absent, a strip or area of herbaceous vegetation shall be established and maintained between barns, corrals, paddocks, and grazing areas pursuant to the NRCS Conservation Practice 393, "Vegetative Filter Strip," and USDA's buffer width design tool for surface runoff found in the publication "Conservation Buffers Design Guidelines for Buffers, Corridors, and Greenways." Livestock shall be excluded from the vegetative filter strips established to protect critical areas pursuant to NRCS Practice 472, "Access Control."

2. Manure Collection, Storage, and Use. Manure and soiled bedding from stalls and paddocks are to be removed and are to be placed in a storage facility protected from rainfall so that runoff does not carry pollutants and bacteria to critical areas. Manure is to be used as cropland fertilizer. The rate and timing of manure application shall not exceed crop requirements or cause surface or groundwater water quality degradation. It is to be applied in a manner to avoid runoff of nutrients and bacteria to critical areas.
3. Pasture Management. Pastures are to be established and managed pursuant to "Prescribed Grazing" (NRCS Practice 528A).
4. Exercise or Barn Lots. These normally bare areas must be stabilized and managed to prevent erosion and sediment movement to critical areas. A diversion terrace shall be installed, where necessary, to hinder flow to and across the lot or paddock. Runoff from the lot must be treated via the vegetative filter strip or riparian buffer as described in subsection (A)(1) of this section to avoid contaminants reaching critical areas.
5. Existing native vegetation within critical areas and their buffers shall be retained.
6. Chemical additions, including fungicides, herbicides, and pesticides, shall not be applied within 50 feet of standing or flowing water except by a licensed applicator.
7. Fertilizers Other Than Manure. The rate and timing of fertilizer application shall not exceed crop requirements, or cause surface or groundwater quality degradation.

B. **Type 2 (Custom) Conservation Farm Plans.** In addition to the elements of a Type 1 conservation farm plan, Type 2 plans must address the following:

1. In developing the elements that an approved conservation farm plan must contain, the ~~technical administrator~~ Director may authorize the use of the methods, technologies, and best management practices of the Natural Resources Conservation Service. Other standards may be used when such alternatives have been developed by a land grant college or a professional engineer with expertise in the area of farm conservation planning.
2. Implementation of the conservation farm plan must protect existing values and functions of critical areas. Benchmark conditions are to be captured and described in the plan. This may consist of photo documentation, written reports or both.

<sup>2</sup> Note that ditched channels may or may not meet the definition of a stream. See Article 9, Definitions.

3. Wetlands shall be conserved pursuant to the provisions of Title 180 – National Food Security Act Manual (see <http://www.nrcs.usda.gov/programs/wetlands/index.html>).
4. Custom conservation farm plans need not address the application, mixing, and/or loading of insecticides, fungicides, rodenticides, and pesticides; provided, that such activities are carried out in accordance with the Washington State Department of Agriculture and all other applicable regulations including, but not limited to: the provisions of Chapter [90.48](#) RCW, the Clean Water Act, United States Code (USC) Section 136 et seq. (Federal Insecticide, Fungicide, and Rodenticide Act), Chapter [15.58](#) RCW (Pesticide Control Act), and Chapter [17.21](#) RCW (Pesticide Application Act).
5. Where potential significant impacts to critical areas are identified through a risk assessment, then plans shall be prepared to prevent and/or mitigate same by:
  - a. A planning advisor; or
  - b. Through the USDA Natural Resources Conservation Service; or
  - c. The Whatcom conservation district; or
  - d. An eligible farmer or rancher, who participates in this program by:
    - i. Attending a County-sponsored or approved workshop, and
    - ii. Conducting a risk assessment of their farm or ranch, alone or with a planning advisor's assistance, and
    - iii. Developing a plan to prevent and/or mitigate any identified risks, and
    - iv. Having the plan approved pursuant to WCC [16.16.290](#).

One resource for guidance is "Tips on Land and Water Management for Small Farm and Livestock Owners in Whatcom County, Washington." It can be obtained from the Whatcom conservation district's website: <http://www.whatcomcd.org/small-farm>. Other guidance may also be used, provided it is consistent with the best available science criteria in WAC [365-195-900](#) through [365-195-925](#).

- C. **Type 3 (Custom) Conservation Farm Plans.** Conservation farm plans meeting the criteria of state and federal laws pertaining to AFO/CAFOs (see Chapter [90.64](#) RCW et seq., [40](#) CFR [122.23](#) and [40](#) CFR Part 412) fulfill the requirements of this chapter. (See U.S. EPA "Final Guidance – Managing Manure Guidance for Concentrated Animal Feeding Operations (CAFOs)" at: <http://epa.gov/guide/cafo/>).

#### **16.16.850 Preparation and Approval of Conservation Farm Plans.**

Conservation farm plans shall be subject to County review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

- A. The ~~technical administrator~~ [Director](#) shall review and approve all conservation farm plans.
- B. Table ~~5~~ [Table 4](#) shows which entities may prepare and/or provide technical assistance and recommendations in preparing which type of conservation farm plan:

Table 5. Who May Prepare Conservation Farm Plans

Who May Prepare	Type 1 Operations	Type 2 and 3 Operations
The farm operator	X	
Whatcom County planning and development services	X	X
A qualified consultant	X	
A watershed improvement district (for a farm or ranch that is within its boundaries)	X	
The Whatcom conservation district	X	X
A planning advisor	X	X

- C. The farm operator can seek conservation farm plan approval directly through the department of planning and development services, or grant permission to any of the entities listed in Table 5Table 4 to prepare and submit it. If the conservation farm plan is prepared by any entity listed in Table 5Table 4 other than the Whatcom conservation district, the Department will conduct a site visit prior to plan approval in order to assess critical areas and sufficiency of the plan to protect water quality and critical areas.

#### 16.16.860 Monitoring and Compliance.

- A. The ~~technical administrator~~ Director and/or the farm operator shall periodically monitor plan implementation and compliance beginning one year after plan approval and every two years thereafter, through the life of the plan, or more frequently at the ~~technical administrator~~ Director's discretion. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. For a time period of up to every five years, self-certification is allowed for Type 1 conservation farm plans, or if the plan is prepared by the Whatcom conservation district or planning advisor and approved by the department. If a sufficient self-certification monitoring report (must include photos and implemented best management practices) is not submitted within 30 days of request, County staff may make a site visit. Site visits will be coordinated with the landowner/farm operator. Prior to carrying out a site inspection, the ~~technical administrator~~ Director shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry, receive confirmation, and afford at least two weeks in selecting a date and time for the visit. At the landowner's/farm operator's discretion, staff may be accompanied by the planning advisor or Whatcom conservation district planner.
- B. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, the planning advisor will advise the agricultural operator of his or her concerns in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not promptly resolved, the planning advisor shall promptly withdraw from representing the farm operator, notify

the ~~technical administrator~~ Director of such, and may report such situations to the ~~technical administrator~~ Director for subsequent action and enforcement in accordance with WCC [16.16.285](#).

- C. The farm practices described in an approved conservation farm plan will be deemed to be in compliance with this chapter so long as the landowner/farm operator is properly and fully implementing the practices and responding to possible adaptive management requirements according to the timeline in the plan. This will be verified through conservation farm plan implementation monitoring.
- D. Agricultural operations shall cease to be in compliance with this article, and a new or revised conservation farm plan will be required, when the ~~technical administrator~~ Director determines that any of the following has occurred:
  - 1. When a farm or ranch operator fails to properly and fully implement and maintain their conservation farm plan.
  - 2. When implementation of the conservation farm plan fails to protect critical areas. If so, a new or revised conservation farm plan shall be required to protect the values and functions of critical areas at the benchmark condition.
  - 3. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current conservation farm plan ineffective. Substantial changes that render a conservation farm plan ineffective are those that:
    - a. Degrade baseline critical area conditions for riparian and wetland areas that existed when the plan was approved; or
    - b. Result either in a direct discharge or substantial potential discharge of pollution to surface or ground water; or
    - c. The type of agricultural practices change from Type 1 to Type 2, Type 2 to Type 3, or Type 1 to Type 3 operations.
  - 4. When the increase in livestock or decrease in land base or nutrient export results in the farm being out of balance between the nutrients generated and to be used by growing crops.
  - 5. When a new or revised conservation farm plan is required, and the farm operator has been so advised in writing and a reasonable amount of time has passed without significant progress being made to develop said plan. Refusal or inability to provide a new plan within a reasonable period of time shall be sufficient grounds to revoke the approved conservation farm plan and require compliance with the standard provisions of this chapter.
  - 6. When an owner or manager denies the ~~technical administrator~~ Director reasonable access to the property for technical assistance, monitoring, or compliance purposes, then the ~~technical administrator~~ Director shall document such refusal of access and notify the owner of his/her findings. The owner shall be given an opportunity to respond in writing to the findings of the ~~technical administrator~~ Director, propose a prompt alternative access schedule, and to state any other issues that need to be addressed. Refusal or inability to comply with an approved conservation farm plan within a reasonable period of time shall be sufficient grounds to revoke said plan and require compliance with the standard provisions of this chapter.
- E. With one exception, Whatcom County will not use conservation farm plans (standard or custom) as an admission by the landowner that s/he has violated this chapter. Disclosure of current farm

practices, structures on conservation farm plan documents, or observations made through monitoring inspections or conservation farm plan approval, will not be used to bring other enforcement actions against a farm operator. The exception is that when matters of major life, health, environment, or safety issues, as determined by the ~~technical administrator~~ Director, are observed and the landowner fails to immediately and permanently remediate, then the observations may be used in an enforcement action.

**16.16.870 Limited Public Disclosure.**

- A. Conservation farm plans will not be subject to public disclosure unless required by law or a court of competent jurisdiction;
- B. Provided, that the County will collect summary information related to the general location of a farming enterprise, the nature of the farming activity, and the specific best management practices to be implemented during the conservation farm plan review process. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the County's approval of the plan.
- C. The County will provide to the public via its website information regarding which farms have approved conservation farm plans and the date of their approval.
- D. Upon request, the County may provide a sample conservation farm plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation farm plan.

## Article 9. Definitions

### 16.16.900 Definitions.

The terms used throughout this program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular. Any words not defined herein shall be defined pursuant to Titles 20 (Zoning), 22 (Land Use and Development), 23 (Shoreline Management Program), or their common meanings when not defined in code.

“Accessory structure” means a structure that is incidental and subordinate in intensity to a primary use and located on the same lot as the primary use. Barns, garages, storage sheds, and similar appurtenances are examples. Structures that share a common wall with a primary residential structure shall be considered an extension of the primary structure, rather than an accessory structure.

“Active alluvial fan” means a portion or all of a fan that has experienced channel changes, erosion, or deposition. Active fans can be identified based on determination by field geomorphic and topographic evidence, and by historical accounts.

“Activity” means human activity associated with the use of land or resources.

“Adaptive management” means using scientific methods to evaluate how well regulatory and non-regulatory actions protect the critical area. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty. Management policy may be adapted based on a periodic review of new information.

“Adequate water supply” means a water supply that meets requirements specified in the Whatcom County drinking water ordinance ([WCC Chapter 24.11-WCC](#)).

“AFO” is an acronym for animal feeding operation.

“Agricultural activities” means those activities directly pertaining to the production of crops or livestock including, but not limited to: cultivation; harvest; grazing; animal waste storage and disposal; fertilization; the operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, and canals; and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. The construction of new structures or activities that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.

“Agricultural land” is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW [84.33.100](#) through [84.33.140](#), or livestock, and/or lands that have been designated as capable of producing food and fiber, which have not been developed for urban density housing, business, or other uses incompatible with agricultural activity.

**Comment [AP87]:** Added for consistency with revisions made to the SMP Bulk Provisions Table per Scoping Document, Item #17d.

“Alluvial fan” means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (i.e., significant change in slope or confinement).

“Alluvium” is a general term for clay, silt, sand, gravel, or similar other unconsolidated detrital materials, deposited during comparatively recent geologic time by a stream or other body of running water, as a sorted or semi-sorted sediment in the bed of the stream or on its floodplain or delta.

“Alteration” means any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the critical area.

“Anadromous fish” means fish species that spend most of their lifecycle in salt water, but return to freshwater to reproduce.

“Animal unit” means 1,000 pounds of livestock live weight.

“Aquifer” means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs (Chapter [173-160 WAC](#)).

“Aquifer susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

“Aquifer vulnerability” is the combined effect of susceptibility to contamination and the presence of potential contaminants.

“Bankfull width” means:

1. For streams – The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross section (see Forest Practices Board Manual, Section 2).
2. For lakes, ponds, and impoundments – Line of mean high water.
3. For tidal water – Line of mean high tide.
4. For periodically inundated areas of associated wetlands – Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

“Base flood” is a flood event having a ~~one-percent~~[1%](#) chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A (zone subject to flooding during a 100-year flood, but less so than V zones) or V (zone subject to the highest flows, wave action, and erosion during a 100-year flood).

“Bedrock” is a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

“Best available science” means information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas. As defined by WAC [365-195-900](#) through [365-195-925](#), best available science is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

“Best management practices” means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
2. Minimize adverse impacts to surface water and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitat;
3. Control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.

“Buffer (the buffer zone)” means the area adjacent to the outer boundaries of critical areas including wetlands; habitat conservation areas such as streams, lakes, and marine shorelines; and/or landslide hazard areas that separates and protects critical areas from adverse impacts associated with adjacent land uses.

“CAFO” is an acronym for concentrated animal feeding operation.

“CFR” is an acronym for Code of Federal Regulations.

“Channel migration zone (CMZ)” means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (1) the historical migration zone (HMZ) – the collective area the channel occupied in the historical record; (2) the avulsion hazard zone (AHZ) – the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (3) the erosion hazard area (EHA) – the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.

“Clearing” means destruction of vegetation by manual, mechanical, or chemical methods and that may result in exposed soils. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

“Commercial fish” means those species of fish that are classified under the Washington State Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC [220-12-010](#)).

“Compensatory mitigation” means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable critical area and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to: wetland creation, restoration, enhancement, and preservation; stream restoration and relocation; rehabilitation; and buffer enhancement.

“Conservation” means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources in order to prevent depletion or harm to the environment.

“Conservation easement” means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.

“Contaminant” means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter [172-200](#) WAC).

“County” means Whatcom County, Washington.

“CPAL” is an acronym for Conservation Program on Agriculture Lands.

“Critical aquifer recharge areas” means areas designated by WAC [365-190-080](#)(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC [365-190-030](#)(2).

“Critical area tract” means land held in private ownership and retained in an open undeveloped condition (native vegetation is preserved) in perpetuity for the protection of critical areas.

Critical Areas. The following areas shall be regarded as critical areas:

1. Critical aquifer recharge areas;
2. Wetlands;
3. Geologically hazardous areas;
4. Frequently flooded areas;
5. Fish and wildlife habitat conservation areas.

“Critical areas report” means a report prepared by a qualified professional or qualified consultant based on best available science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.

“Critical facilities (essential facilities)” means buildings and other structures that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes pursuant to the most recently adopted International Building Code (IBC).

“Critical habitat” means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified herein with reference to lists, categories, and definitions promulgated by the Washington State Department of Fish and Wildlife as identified in WAC [232-12-011](#) or [232-12-014](#); in the Priority Habitat and Species (PHS) Program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

“Critical saltwater habitat” includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

“Cumulative impact” means effects on the environment that are caused by the combined results of past, current and reasonably foreseeable future activities. Evaluation of such cumulative impacts should consider: (1) current circumstances affecting the critical area and relevant natural processes; (2) reasonably foreseeable future development that may affect the critical area; and (3) beneficial effects of any established regulatory programs under other local, state, and federal laws.

“Debris flow” means a moving mass of rock fragments, soil, and mud, more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

“Debris torrent” means a violent and rushing mass of water, logs, boulders and other debris.

“Deepwater habitats” means permanently flooded lands lying below the deepwater boundary of wetlands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium in which the dominant organisms live. The boundary between wetland and deepwater habitat in the marine and estuarine systems coincides with the elevation of the extreme low water of spring tide; permanently flooded areas are considered deepwater habitats in these systems. The boundary between wetland and deepwater habitat in the riverine and lacustrine systems lies at a depth of two meters (6.6 feet) below low water; however, if emergent vegetation, shrubs, or trees grow beyond this depth at any time, their deepwater edge is the boundary.

“Delineation” means the precise determination of wetland/non-wetland boundaries in the field according to the application of the specific method described in the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, as amended, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0) 2010, or as revised.

Designated Species, Federal. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted for current listing status.

Designated Species, State. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC [232-12-014](#) (state endangered species) and WAC [232-12-011](#) (state threatened and sensitive species). The State Department of Fish and Wildlife maintains the most current listing and should be consulted for current listing status.

"Development" means any land use activity, action, or manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, site work, and installation of utilities; land division, binding site plans, and planned unit developments; dredging, drilling, dumping, filling, grading, clearing, or removal of any sand, gravel, or minerals; shoreline stabilization works, driving of piling, placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment. any activity that requires federal, state, or local approval for the use or modification of land or its resources. These activities include, but are not limited to: subdivisions and short subdivisions; binding site plans; planned unit developments; variances; shoreline substantial development permits and exemptions; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval.

**Comment [CES88]:** Amended to be consistent with that in T-23.

"Director" means the director of the Whatcom County Department of Planning and Development Services, or his/her designee.

"Ditch" or "drainage ditch" means an artificially created watercourse constructed to convey surface or groundwater. Ditches are graded (manmade) channels installed to collect and convey water to or from fields and roadways. Ditches may include:

1. Irrigation ditches;
2. Waste ways;
3. Drains;
4. Outfalls;
5. Operational spillways;
6. Channels;
7. Stormwater runoff facilities; or

8. Other wholly artificial watercourses.

This definition is not meant to include artificial water courses that conveys or historically conveyed (prior to human alteration) waters of the state, is used by anadromous or other fish populations, or flows directly into shellfish habitat conservation areas.

“Emergency activities” means those activities which require immediate action within a time too short to allow full compliance with this chapter due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter [90.58](#) RCW and this chapter. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

“Emergent wetland” means a wetland with at least 30%~~percent~~ of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

“Enhancement” means actions performed within an existing degraded critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing critical area or buffer. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

“Erosion” means a process whereby wind, rain, water and other natural agents mobilize, transport, and deposit soil particles.

“Erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

“Estuarine wetland” means the zero-gradient sector of a stream where it flows into a standing body of water together with associated natural wetlands; tidal flows reverse flow in the wetland twice daily, determining its upstream limit. It is characterized by low bank channels (distributaries) branching off the main stream to form a broad, near-level delta; bank; bed and delta materials are silt and clay; banks are stable; vegetation ranges from marsh to forest; and water is usually brackish due to daily mixing and layering of fresh and salt water.

“Exotic” means any species of plants or animals that is not indigenous to the area.

“Farm pond” means an open water depression created from a non-wetland site in connection with agricultural activities.

“Feasible” means an action, such as a development project, mitigation, or preservation requirement that meets all of the following conditions:

1. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
2. The action provides a reasonable likelihood of achieving its intended purpose; and
3. The action does not physically preclude achieving the project’s primary intended legal use.

In cases where this chapter requires certain actions “unless they are infeasible,” the burden of proving infeasibility is on the applicant/ proponent. In determining an action’s infeasibility, the County may weigh the action’s relative costs and public benefits, considered in the short- and long-term time frames.

“Feasible alternative” means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (1) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (2) the action provides a reasonable likelihood of achieving its intended purpose; and (3) the action does not physically preclude achieving the project’s primary intended legal use. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.

“Fen” means a mineral-rich wetland formed in peat that has a neutral to alkaline pH. Fens are wholly or partly covered with water and dominated by grass-like plants, grasses, and sedges.

“Fill material” means any solid or semisolid material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure that, when placed, changes the grade or elevation of the receiving site.

“Filling” means the act of transporting or placing by any manual or mechanical means fill material from, to or on any soil surface, including temporary stockpiling of fill material.

“Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to: rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. “Fish and wildlife habitat conservation areas” does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company unless they meet the qualifications of WCC 16.16.710(B).

“Fish habitat” means a complex of physical, chemical, and biological conditions that provide the life-supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements of a species depend on its age and activity, the basic components of fish habitat in rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not limited to, the following:

1. Clean water and appropriate temperatures for spawning, rearing, and holding;
2. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-channel habitat;

3. Abundance of bank and in-stream structures to provide hiding and resting areas and stabilize stream banks and beds;
4. Appropriate substrates for spawning and embryonic development. For stream- and lake-dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand;
5. Presence of riparian vegetation as defined in this article. Riparian vegetation creates a transition zone, which provides shade and food sources of aquatic and terrestrial insects for fish;
6. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.

“Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

“Floodplain” is synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act. “Floodplain” means the total land area adjoining a river, stream, watercourse, or lake subject to inundation by the base flood.

“Floodway” means the area, as identified in a master program, that either: (a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. “Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the surface water elevation more than one foot. Also known as the “zero-rise floodway.”

“Forested wetland” means a wetland with at least 30% ~~percent~~ of the surface area covered by woody vegetation greater than 20 feet in height, excluding monotypic stands of red alder or cottonwood that average eight inches in diameter at breast height or less.

“Frequently flooded areas” means lands in the floodplain subject to a ~~one percent~~ 1% or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC ~~365-190-080~~ (3). Classifications of frequently flooded areas include, at a minimum, the “special flood hazard area”

**Comment [CES89]:** Revised per language of WAC 173-26-020(20).

**Comment [P/C90]:** P/C moved to approve. Carries 9-0

designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

“Function assessment” or “functions and values assessment” means a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a wetland or other critical area, usually by determining the presence of certain characteristics, and determining how well the critical area is performing those functions. Function assessments can be qualitative or quantitative and may consider social values potentially provided by the wetland or other critical area. Function assessment methods must be consistent with best available science.

“Functions” means the processes or attributes provided by areas of the landscape (e.g., wetlands, rivers, streams, and riparian areas) including, but not limited to, habitat diversity and food chain support for fish and wildlife, groundwater recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

“Functions, services, and value” means the beneficial functions that critical areas perform, the services they provide humans, and the values people derive from these roles including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, wave attenuation, protection from hazards, providing historical and archaeological resources, noise and visual screening, open space, and recreation. These beneficial roles are not listed in order of priority.

“Game fish” means those species of fish that are classified by the Washington State Department of Wildlife as game fish (WAC [232-12-019](#)).

“Geologically hazardous areas” means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

“Gradient” means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth’s surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

“Grading” means any excavating or filling of the earth’s surface or combination thereof.

“Grazable acres” means both pasture and hay land as described in the Whatcom County Standard Farm Conservation Planning Workbook.

“Groundwater” means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter [90.44](#) RCW).

“Groundwater management area” means a specific geographic area or subarea designated pursuant to Chapter [173-100](#) WAC for which a groundwater management program is required.

“Groundwater management program” means a comprehensive program designed to protect groundwater quality, to assure groundwater quantity, and to provide for efficient management of water resources while recognizing existing groundwater rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated groundwater management area or subarea and developed pursuant to Chapter [173-100](#) WAC.

“Growing season” means the portion of the year when soil temperatures are above biologic zero (41 degrees Fahrenheit).

“Growth Management Act” means Chapters [36.70A](#) and [36.70B](#) RCW, as amended.

“Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be locally important by Whatcom County pursuant to WCC [16.16.710](#)(C)(12).

“Hazard tree” (outside the shoreline jurisdiction) means a tree whose risk evaluation, as determined through a Whatcom County approved tree risk assessment method, is high. Risk evaluation is the combined measurement of: tree failure identification, probability of failure, potential damage to permanent physical improvements to property causing personal injury, and consequences. A tree that constitutes an airport hazard is considered a hazard tree. A hazard tree whose failure is imminent and consequences of damage to permanent physical improvements to property causing personal injury are significant is considered an emergency. “Imminent” in this instance means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load. Imminent may be determined by a qualified consultant (defined in this section) or when mutually agreed upon by a landowner and Whatcom County.

“Hazard tree” (within the shoreline jurisdiction) means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.

“Hazardous substance” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC [173-303-090](#) or [173-303-100](#).

“High intensity land use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high-intensity new agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields), hobby farms, and Class IV special forest practices, including the building of logging roads (note that pursuant to WCC [16.16.230](#)(A), all other forest practices are exempt from this chapter).

“Hydraulic project approval (HPA)” means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter [75.20](#) RCW.

**Comment [P/C91]:** P/C Motion to move these uses to moderate intensity land use definition. Motion carries 4-3-1-0

**Comment [CES92]:** They are not exempt; however, they do not require review under this chapter.

“Hydric soil” means a soil that is or has been saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the NRCS “Field Indicators of Hydric Soils” Version 7, and/or the Corps of Engineers Wetlands Delineation Manual, as amended.

“Hydrologic soil groups” means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:

1. Low runoff potential and a high rate of infiltration potential;
2. Moderate infiltration potential and a moderate rate of runoff potential;
3. Slow infiltration potential and a moderate to high rate of runoff potential; and
4. High runoff potential and very slow infiltration and water transmission rates.

“Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

“Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition and provides other functions related to maintaining water quality.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow compared to natural conditions prior to development. Common impervious surfaces may include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Impervious surfaces do not include surface created through proven low impact development techniques.

“In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

“Infiltration” means the downward entry of water into the immediate surface of soil.

“Intertidal zone” means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

“Invasive species” means a species that is: (1) nonnative (or alien) to Whatcom County, and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

“Lahar” means a mudflow and debris flow originating from the slopes of a volcano.

“Lahar hazard area” means areas that have been or potentially could be inundated by lahars or other types of debris flows, according to a map showing volcano hazards from Mount Baker, Washington.

“Lake” means a naturally or artificially created body of deep (generally greater than 6.6 feet) open water that persists throughout the year. A lake is larger than a pond, greater than one acre in size, equal to or greater than 6.6 feet in depth, and has less than 30% ~~percent~~ aerial coverage by trees, shrubs, or persistent emergent vegetation. A lake is bounded by the ordinary high water mark or the extension of the elevation of the lake’s ordinary high water mark with the stream where the stream enters the lake.

“Landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

“Landslide” means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material en masse; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

“Landslide hazard areas” means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to mass wasting.

“Low intensity land use” means land use that includes the following uses or activities: forestry (cutting of trees only), low intensity open space (such as passive recreation and natural resources preservation), ~~and~~ unpaved trails, utility corridors without maintenance roads and little or no vegetation management, or similar uses that do not require land disturbance.

**Comment [CES93]:** Added to make consistent with DOE’s guidance.

“LWD” is an acronym for large woody debris.

“Maintenance or repair” means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

“Major development” means any project for which a major project permit is required pursuant to WCC Chapter 20.88-WCC. For the purposes of this chapter, “major development” shall also mean any project associated with an existing development for which a major development permit has been required or other existing legally nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 20.

“Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

“Mature forested wetland” means a wetland with an overstory dominated by mature trees having a wetland indicator status of facultative (FAC), facultative-wet (FACW), or obligate (OBL). Mature trees are considered to be at least 21 inches in diameter at breast height.

“Maximum credible event” means the largest debris flow event that can be hypothesized from geologic processes within a watershed above an alluvial fan with consideration of the volume of sediment and debris that would be available within the drainage combined with material from landslides that would enter the drainage, and the volume of water that could become trapped behind and within the debris flow or dammed within the drainage.

“May” means the action is allowable, provided it conforms to the provisions of this title.

“Mean annual flow” means the average flow of a river or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous 10 years should be used in determining mean annual flow.

“Mitigation” means individual actions that may include a combination of the following measures, listed in order of preference:

1. Avoiding an impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
3. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for an impact by replacing or providing substitute resources or environments;  
and
6. Monitoring the mitigation and taking remedial action when necessary.

“Mitigation bank” means a site where wetlands or similar habitats are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources.

“Mitigation bank instrument” means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank. The “bank instrument” describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

“Mitigation bank review team” or “MBRT” means an interagency group of federal, state, tribal and local regulatory and resource agency representatives that are invited to participate in negotiations with the bank sponsor on the terms and conditions of the bank instrument.

“Mitigation bank review team process” or “MBRT process” means a process in which the County and other agencies strive to reach consensus with the MBRT members on the terms, conditions, and procedural elements of the bank instrument.

“Mitigation bank sponsor” means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

“Mitigation plan” means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

“Moderate intensity land use” means land use that includes the following uses or activities: residential (one unit/gross acre or less), moderate-intensity open space (parks with biking, jogging, etc.), moderate-intensity new agriculture (orchards, ~~and~~ hay fields, nurseries, raising and harvesting crops requiring annual tilling), ~~and~~ paved trails, building of logging roads, and utility corridors or rights-of-way shared by several utilities and including access/maintenance roads.

**Comment [P/C94]:** Motion to move these uses to moderate intensity land use definition. Motion carries 4-3-1-0

**Comment [CES95]:** Making consistent w/ DOE guidance.

“Monitoring” means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ecosystem functions and processes, and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites.

“Native vegetation” means plant species that are indigenous to Whatcom County and the local area.

“Nearshore habitat” means the zone that extends seaward from the marine shoreline to a water depth of approximately 20 meters (66 feet). Nearshore habitat is rich biologically, providing important habitat for a diversity of plant and animal species.

“No net loss” means the maintenance of the aggregate total of the County’s critical area functions and values as achieved through a case-by-case review of development proposals. Each project shall be evaluated based on its ability to meet the no net loss goal.

“Off-site mitigation” means to replace critical areas away from the site on which a critical area has been adversely impacted by a regulated activity.

“Ongoing agriculture” means those activities conducted on lands defined in RCW [84.34.020](#)(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

“Ordinary high water mark” means the mark or line on all lakes, rivers, streams, and tidal water that will be found by examining the beds and banks and ascertaining where the presence and action of

waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation (RCW [90.58.030](#)(2)(b)).

“Person” means any individual, ~~trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity, either public or private, acting as a unit cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.~~

Comment [CES96]: Making consistent w/ other Titles.

“Planned unit development (PUD)” means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.

“Planning advisor” means those qualified individuals who have technical experience and training necessary to prepare conservation farm plans for agricultural lands and who have been certified a technical service provider by the USDA Natural Resources Conservation Service (see <http://techreg.usda.gov>) and signed the practice and confidentiality agreement.

“Pond” means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than ~~30%-percent~~ aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds, ponds built for the primary purpose of combating fires, stormwater facilities, and beaver ponds less than two years old are excluded from this definition.

“Potable” means water that is suitable for drinking by the public (Chapter [246-290](#) WAC).

“Preservation” means actions taken to ensure the permanent protection of existing, ecologically important critical areas and/or buffers that the County has deemed worthy of long-term protection.

“Primary association” means the use or potential use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat

element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC [173-26-020](#)(24)).

“Priority species” means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington State Department of Fish and Wildlife.

“Project” means any proposed or existing activity regulated by Whatcom County.

“Project permit” or “project permit application” means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.

“Qualified professional” or “qualified consultant” means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC [365-195-905](#)(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or a related field, and related work experience, and meet the following criteria:

1. Is listed on a roster of qualified professionals or qualified consultants prepared by the ~~PDS~~ [Natural Resource Supervisor/Director](#).
2. A qualified professional for wetlands must have a degree in wildlife biology, ecology, soil science, botany, or a closely related field and a minimum of five years of professional experience in wetland delineation and assessment associated with wetland ecology in the Pacific Northwest or comparable systems. The following is required to be submitted to be placed on the roster:
  - a. Curriculum vitae or resume;
  - b. Three complete and approved wetland delineations (as primary author on at least one), conducted in accordance with the U.S. Army Corps of Engineers Wetlands Delineation Manual, 1987, or as amended; and
  - c. One complete and approved wetland delineation using the U.S. Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region, 2010, or as amended. Successful completion of a wetland class using this manual may be substituted for this requirement.
3. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type or approved equivalent work experience.
4. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.
5. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.
6. A qualified professional for tree risk assessment means a certified arborist or certified tree professional with a current ISA Tree Risk Assessment Qualification.

7. Anyone who has had their professional licensure, ~~or~~ certification, professional membership revoked for violations of the provisions of their professional al licensure, certification, or professional membership does not meet the definition of a qualified professional or qualified consultant.

“RCW” is an acronym for Revised Code of Washington.

“Reasonable use” means a property that is deprived of all reasonable use when the owner can realize no reasonable return on the property or make any productive use of the property. “Reasonable return” does not mean a reduction in value of the land, or a lack of a profit on the purchase and sale of the property, but rather, where there can be no beneficial use of the property; and which is attributable to the implementation of the critical areas ordinance.

“Reasonable use exception” means an exception to the standards of this title that allows for any one of the uses allowed within a given zoning designation which cannot otherwise conform to the requirements set forth in this title, including the variance criteria; that have the least impact on the critical areas found on the subject property.

“Recharge” means the process involved in the absorption and addition of water from the unsaturated zone to groundwater.

“Reestablishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former critical area. Reestablishment results in rebuilding a former critical area and results in a gain in acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded critical area. Rehabilitation results in a gain in function but does not result in a gain in area. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

“Resident fish” means a fish species that completes all stages of its life cycle within freshwater and frequently within a local area.

“Restoration” means measures taken to restore an altered or damaged natural feature, including:

1. Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and
2. Actions performed to reestablish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or catastrophic events.

“Retroactive Permit” means a permit applied for after the development, use, or activity has occurred, generally to bring such development, use, or activity into compliance through code enforcement.

“Rills” means steep-sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

“Riparian corridor” or “riparian zone” means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

“Riparian vegetation” means vegetation that tolerates and/or requires moist conditions and periodic free-flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilize stream banks, attenuate high water flows, provide wildlife habitat and travel corridors, and provide a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

“Scrub-shrub wetland” means a wetland with at least ~~30%-percent~~ 30% of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

“Seiche” is a standing wave in an enclosed or partially enclosed body of water. Seiches are typically caused when strong winds and rapid changes in atmospheric pressure push water from one end of a body of water to the other. When the wind stops, the water rebounds to the other side of the enclosed area. The water then continues to oscillate back and forth for hours or even days. In a similar fashion, earthquakes, tsunamis, or severe storm fronts may also cause seiches along ocean shelves and ocean harbors. Seiches and seiche-related phenomena have been observed on lakes, reservoirs, swimming pools, bays, harbors and seas. The key requirement for formation of a seiche is that the body of water be at least partially bounded, allowing the formation of the standing wave.

“Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earth-quake-induced ground shaking, slope failure, settlement, or soil liquefaction.

“SEPA” is a commonly used acronym for the State Environmental Policy Act.

“Shellfish” means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

“Shellfish habitat conservation areas” means all public and private tidelands suitable for shellfish, as identified by the Washington State Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington State Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC ~~365-190~~ 365-190-80. Any area that is or has been designated as a shellfish protection district created under Chapter ~~90.72~~ 90.72 RCW is also a shellfish habitat conservation area.

“Shellfish protection district” means the Drayton Harbor shellfish protection district (DHSPD) and the Portage Bay shellfish protection district (PBSPD) (~~WCC~~ Chapter ~~16.20-WCC~~ 16.20), or other area formed by the County based on RCW Title ~~90~~ 90, in response to State Department of Health (DOH) closures or

downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.

“Shorelands” or “shoreland areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter [90.58](#)RCW.

“Shoreline” (Shoreline Management Act) means all of the water areas of the state, including reservoirs and their associated wetlands, together with lands underlying them, except:

1. Shorelines on segments of streams upstream from a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
2. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shorelines” means all of the water areas of the state as defined in RCW [90.58.030](#), including reservoirs and their associated shorelands, together with the lands underlying them, except:

1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second (cfs) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

“Shoreline Jurisdiction.” See WCC 23.20.010.

“Shorelines of statewide significance” means those areas defined in RCW [90.58.030](#)(2)(e).

“Shorelines of the state” means the total of all “shorelines,” as defined in RCW [90.58.030](#)(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW [90.58.030](#)(2)(e).

“Single-family development” means the development of a single-family residence permanently installed and served with utilities on a lot of record.

“Site” means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way, under the applicant’s/proponent’s ownership or control that is the subject of a development proposal or change in use.

“Slope” means:

1. Gradient.
2. The inclined surface of any part of the earth’s surface, delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

“Soil” means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

“Special Flood Hazard Area (SFHA)” means the area that will be inundated by the flood event having a 1% chance of being equaled or exceeded in any given year. The 1% annual chance flood is also referred to as the base flood or 100-year flood. On the FIRM maps, SFHAs are labeled as Zone A,

Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30.

“Species of local importance” are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

“Sphagnum bog” means a type of wetland dominated by mosses that form peat. Sphagnum bogs are very acidic, nutrient-poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.

“Stormwater Manual” or “Stormwater Management Manual for Western Washington” means the version of the Department of Ecology’s Stormwater Management Manual for Western Washington most recently adopted by council.

“Streams” means those areas where surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include ditches or other artificial water courses unless they are used to convey streams naturally occurring prior to human alteration, and/or the waterway is used by anadromous or other fish populations, or flows directly into shellfish habitat conservation areas.

“Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner whether installed on, above, or below the surface of the ground or water, except for vessels.

“Substantially Developed Surface” is a legally established area of non-vegetated impervious surface.

“Surface waters of state.” See definition for “waters of the state”

“Survey” means one of the following:

1. Mapping using a compass and tape; or
2. Mapping using a smart phone or hand held GPS; or
3. A survey completed by a licensed surveyor.

“Swale” means a shallow drainage conveyance with relatively gentle side slopes, generally with flow depths less than one foot.

~~“Technical administrator” means the director of the planning and development services department or staff member designated by the director to perform the review functions required in this chapter.~~

**Comment [CES97]:** Term no longer used; replaced by “director.”

“Toe” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.

“Top” means the top of a slope; or in this chapter it may be used as the highest point of contact above a landslide hazard area.

“Unavoidable” means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.

“USDA” is an acronym for the United States Department of Agriculture

“Utilities” means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.

“Volcanic hazard areas” means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

“WAC” is an acronym for Revised Code of Washington.

“Waters of the state” or “state waters” means all [lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and other surface waters and watercourses within the jurisdiction of Washington State \(RCW 90.48.020\).](#) ~~salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.~~

“Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, coastal).

“Watershed improvement district” means a special district established pursuant to Chapter [85.38](#) RCW citation.

“WDFW” is an acronym for the Washington State Department of Fish and Wildlife.

“Wellhead protection area” means the area (surface and subsurface) managed to protect ground-water-based public water supplies.

“Wet meadow” means palustrine emergent wetlands, typically having disturbed soils, vegetation, or hydrology.

“Wet season” means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

“Wetland” means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands include those artificial wetlands intentionally created to mitigate wetland impacts.

“Wetland buffer” means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland.

“Wetland class” means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of 30% ~~percent~~ or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.

“Wetland delineation” means the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the Corps of Engineers Wetlands Delineation Manual, 1987 Edition, and the Western Mountains, Valleys, and Coast Region Supplement (Version 2.0) 2010, or as revised, and the mapping thereof.

“Wetland edge” means the boundary of a wetland as delineated based on the definitions contained in this chapter.

Wetland Enhancement. See “mitigation.”

“Wetland mitigation bank” means a site where wetlands and buffers are restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

Wetland Restoration. See “mitigation” and “reestablishment.”

“Windthrow” means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

“Wood waste” means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

“WRIA” is an acronym for Water Resource Inventory Area



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-209

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<b>File ID:</b>	AB2021-209	<b>Version:</b>	1	<b>Status:</b>	Referred
<b>File Created:</b>	03/23/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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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

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## HISTORY OF LEGISLATIVE FILE

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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)	

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**Agenda Bill Master Report Continued (AB2021-209)**

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09/28/2021	Council	HELD IN COMMITTEE	Council Committee of the Whole
10/12/2021	Council Committee of the Whole	FORWARDED TO COUNCIL WITHOUT A RECOMMENDATION	
10/12/2021	Council	REFERRED TO COMMITTEE	Council Committee of the Whole

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**Attachments:** CFWB Task Force Letter for 10.26.2021

October 19, 2021

Dear Council Members of the Whatcom County Council:

Thank you for your support of our work and great discussion at last week's Council meeting. We appreciated the opportunity to hear your priorities and questions and look forward to developing a more specific proposal for investment into our local child care industry.

We wholeheartedly agree with your approach and vision. Our survey shows the community, including parents, strongly supports both investing ARPA dollars in child care and addressing Priority A (Increase child care workforce stabilization and development) first. We greatly appreciate your effort to create an authentic community involved process and your bold vision to invest significantly in child care. We gladly accept your invitation to continue to be a part of this work. We are mapping out a process to engage others in our community to help us do the research needed to develop specific funding proposals based on analyses of return on investment, feasibility and overall impact on the sector. We continue to advocate for at least half of the ARPA funds, a \$22.25 million investment, be directed toward child care and we commit to having the suggested initial investments ready for action by your first Council meeting in January 2022.

We cannot emphasize enough that the stabilization of the current workforce must be the number one funding priority. It is an urgent and a fundamental need. This summer, even when parents were drowning trying to balance working while caring for their children, there were 618 vacant early child care slots. These slots were open because child care programs couldn't retain or hire the staff needed for their programs. Child care workers are leaving the field at an alarming rate. New college graduates from Western Washington University's early learning program are choosing other lines of work. Increasing child care capacity and increasing affordability for families simply won't work if there aren't qualified child care teachers to staff programs.

While stabilizing the current workforce is most urgent, each of the five priority areas outlined in our initial proposal are essential to invest in over time for our local community. In addition to providing specific information supported by data as to how best to invest in workforce stabilization, we will work with you to develop the specific investments needed to support children and families today, tomorrow and forever.

We do anticipate engaging external expertise to contribute to the analysis needed to develop a suitable investment plan. We will look to our local colleagues in the Child Care Coalition, Child Care Aware and the Center for Childcare Retention and Expansion as well as resources at institutions, such as Western Washington University, and the Healthy Whatcom Results-Based Accountability process, to help us. The Health Department has indicated they have funds available to support work related to children and families and are prepared to oversee any necessary contracts.

Thank you for the opportunity to continue to inform the County government's role in this work. Together we will make a difference for Whatcom County's young children and their families.

Submitted to you by the Resources and Funding workgroup

Child and Family Well-being Task Force

Members: Anne Granberg, Astrid Newell, Brian Nelson, Greg Hansen, Jamie Desmul, Jed Holmes, Jennifer Wright, Ray Deck and Vesla Tonnessen



# Whatcom County

COUNTY COURTHOUSE  
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## Agenda Bill Master Report

File Number: AB2021-610

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<b>File ID:</b>	AB2021-610	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/19/2021	<b>Entered by:</b>	AHaines@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Discussion with County Executive on options for aid to Point Roberts

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memo

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Pt Roberts COTW item 1026.pdf



Date: Oct 19, 2021  
To: Whatcom County Council  
From: County Executive Satpal Sidhu  
RE: Aid options for Point Roberts

*Satpal Sidhu*

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### Summary

A number of households in Point Roberts are facing economic uncertainty after exhaustion of unemployment benefits. Upcoming changes in border travel restrictions will likely not be sufficient to prompt the return of Canadian visitors and property owners, as long as Canadian testing requirements remain in force. Several options are being considered for potential aid to the community.

### Background

The CARES Act and other federal programs that expanded and extended unemployment benefits expired the week ending September 4, 2021. The federal extension was distributed to individuals who had exhausted their state benefits (typically exhausted within 26 weeks). ESD reports that 59 individuals living in Point Roberts claimed the federal benefits during the final week of the benefits' availability. The average benefit to unemployed residents of Point Roberts during 2020 and 2021 was \$615.85.

On September 14, the Council supported the County Executive's request to tentatively set aside \$250,000 from American Rescue funds for emergency aid to Point Roberts, with the aim of leveraging state funding to maximize the impact of those dollars. On September 20, the State Department of Commerce announced its Border Business Relief Program for businesses that have experienced hardship specifically as a result of the COVID-19 border restrictions.

The Commerce grants to eligible businesses will be up to \$50,000. These award amounts will vary and will consider previous Working Washington awards received from Commerce or affiliated partners. Businesses with 2019 gross revenue in excess of \$5 million are not eligible for the state grants. This eligibility criteria excludes the sole grocery store in Point Roberts and one or more fuel stations.

### Re-Opening and Testing Requirements

The White House announced that it would open the Canadian border to non-discretionary travel starting Monday, November 8. However, under Canada's current travel regime, all returning Canadians are required to perform a COVID test in the US prior to returning. Considering the costs and time involved, this represents a significant hurdle for Canadian travelers and property owners.

Canada's travel regime includes a specific testing exclusion for "habitual residents" of Point Roberts. The County Administration is working with the Governor's Office and our federal representatives to see if a similar testing exemption could be made either for Canadian property owners in Point Roberts or all individuals using that particular border crossing.

If no changes are made ahead of November 8, then the relaxing of travel restrictions by the US will not significantly change the economic situation for Point Roberts or other impacted communities along the border.

### **Possible actions steps**

One or several of the following actions may be considered to respond to the community's needs.

1. **Grants to impacted individuals** – temporary and partial replacement of exhausted unemployment benefits. For example, 75% of average benefits for 6 weeks result in a one-time grant of \$2,768. If 50 individuals were determined to be eligible, the total cost of this program would be \$138,400. ESD has indicated a willingness to provide verification of grant applications.
  - Considerations – provides direct aid to most highly impacted families; high administrative burden for implementation; may need to be extended if conditions do not improve; inequitable for similarly impacted families outside Point Roberts.
2. **Bonuses to businesses which hire unemployed individuals** – one-time grants to incentivize businesses to hire Point Roberts residents who were recent recipients of unemployment benefits. For example, a \$3000 grant per new hire who is retained on payroll for at least 8 weeks. If 50 new hires are covered, the program would cost \$150,000.
  - Considerations – incentivizes hiring, providing direct aid to businesses and indirect aid to recently unemployed individuals; may not produce sustained employment if economic conditions remain unchanged; slow and inefficient in helping impacted families.
3. **Grants to impacted businesses ineligible for state grants** – one-time grants to stabilize key businesses which are ineligible for state grants but impacted by the border restrictions. For example, allocating \$25,000-\$50,000 to ensure the continuity of the provision of essential goods and services.
  - Considerations – ensures access to essential goods and services; no significant impact on unemployed individuals (if not implemented in conjunction with other aid programs).

Recognizing that the options described above are stop-gap measures, it would be helpful to hear from Council which of these options they are interested in pursuing, so that staff may develop parameters. While the administration would like to move quickly, the first two options are unlike any program previously undertaken by Whatcom County and will require time-sensitive due diligence.



# Whatcom County

COUNTY COURTHOUSE  
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Bellingham, WA 98225-4038  
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## Agenda Bill Master Report

File Number: AB2021-482

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<b>File ID:</b>	AB2021-482	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	08/02/2021	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole				<b>Final Action:</b>
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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

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### HISTORY OF LEGISLATIVE FILE

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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	
10/12/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	

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**Attachments:** ARPA Fund Priorities Memo July 20, 2021, Browne's Proposed Changes to ARPA Allocation.pdf, ARPA Expenditure Budget Spreadsheet for Oct 26, 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 10<sup>th</sup> 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.

Invest in capital projects										
Countywide Infrastructure		\$	4,700,000		\$	3,000,000	\$	1,700,000		Work with City/PUD/Port on infrastructure projects - East Blaine at \$3.5M 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, Deming 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	\$ -

### Countywide Infrastructure

- Delete County ARPA as a source to fund other jurisdictions infrastructure needs
- Propose East Blaine Stormwater be funded by EDI loans to be repaid by LID
- Lynden should self-fund their infrastructure request. They have ARPA funds and have already received over 50% of total EDI funds distributed to all jurisdictions since the EDI program was enacted

### Replace Countywide Infrastructure line item with **County Infrastructure bucket**

- Allocate 5,700,000 for NW Annex development

### Regional Water Infrastructure

- Replace ARPA with Conservation futures fund money

### Broadband

- Defer any additional Fiber backbone funding until a Last Mile technology solution that attaches to the existing built fiber backbone has been deployed and proven to be economically viable
- Then use EDI money as matching funds as needed above for any State or Federal grants

### Economic recovery – childcare

- Reallocate \$6,000,000 now surplus from “Countywide Infrastructure” to Childcare up to a total of \$19,000,000

	ARPA Expenditure/Budget Document - Admin/Council Consideration							
	PRIORITY AREAS	%	County Total	2021	2022	2023	2024	Notes
	UNMET NEEDS IN PRIORITY AREAS							
1	Housing security							
a	Rental assistance FWC		\$ -					Rental Assistance & CM for FWC (post ESG-CV ??)
b	Motel stays		\$ -					Use new WCH funds (2.1M committed, if not)?
c	Capital		\$ 7,225,000	\$ 3,525,000	\$ 1,000,000	\$ 2,700,000		New Housing Units- Aloha (\$575K) and Laurel/Forest (\$3 M) Ord 2021-043
d	Eviction prevention (rental assistance)		\$ -					Set aside in the event \$16M (+ \$10m 2022)
e	Shelter homeless		\$ 4,000,000		\$ 1,000,000	\$ 3,000,000		Family/Child Shelter and Old Town? - 750K Emergency Shetler Options in 2022 - - 250K Youth winter - New Way ministries (\$100K) 5-6 unit (lynden) - Engedi Shelter (lynden)
f	Shelter hygiene		\$ 1,500,000		\$ 1,500,000			Waystation
g	Homeless outreach		\$ -					HOT outreach expansion.
h	Housing support services and case management		\$ -					
	SUBTOTAL, HOUSING SECURITY	29%	\$ 12,725,000	\$ 3,525,000	\$ 3,500,000	\$ 5,700,000	\$ -	
2	Economic recovery - childcare							
a	Large facility shells		\$ 10,000,000	\$ 1,000,000	\$ 3,500,000	\$ 3,500,000	\$ 2,000,000	In qualified census tracts: Aloha, Millworks, Barkley, Opportunity Council. Shell purchase (of condo). Separate from housing contribution. - Boys and Girls Club Lyden
b	Large facility TI's		\$ -					Childcare task force input
c	Small Facility Expansion							Lynden B+GC (500K)
d	Premium pay and/or Workforce Dev.		\$ 3,000,000		\$ 2,000,000	\$ 1,000,000		Childcare Taskforce feedback needed.
e	Scholarships or bonuses for child care providers		\$ -					Tuition reduction
	SUBTOTAL, CHILDCARE	29%	\$ 13,000,000	\$ 1,000,000	\$ 5,500,000	\$ 4,500,000	\$ 2,000,000	Track other State and Federal funding sources
3	Food security and basic needs							
a	Food banks		\$ -					Salvation Army, Outside the qualified census tract
b	Food purchases		\$ -					WCF?
	SUBTOTAL, FOOD SECURITY AND BASIC NEEDS	0%	\$ -	\$ -	\$ -	\$ -	\$ -	
4	Economic recovery - tourism							
a	Tourism grants		\$ -					Use LTAC
b	Tourism: regional marketing		\$ -					Use LTAC
	SUBTOTAL, TOURISM	0%	\$ -	\$ -	\$ -	\$ -	\$ -	
5	Economic recovery - business support							
a	Business grants		\$ -					Bussiness support to be based on impact due to COVID
b	Retail advocate/COVID support		\$ 250,000	\$ 250,000.00				Pt. Roberts Business and Employee Support
c	Permenant street alterations for COVID adaptations		\$ -					additional feedback needed
	SUBTOTAL, BUSINESS SUPPORT	1%	\$ 250,000.00	\$ 250,000.00	\$ -	\$ -	\$ -	
6	Invest in capital projects							
a	Countywide Infrastructure		\$ 4,000,000		\$ 3,000,000	\$ 1,000,000		Work with City/PUD/Port on infrastructure projects - East Blaine at \$3.5M for Sewer?, Lynden Fair Stormwater (150K)
	SUBTOTAL, COUNTY WIDE INFRASTRUCTURE	9%	\$ 4,000,000					
b	Regional Water Infrastructure		\$ -					\$1.4M - Black Slough, \$1.6M - Fish Camp, \$1.2M - Lynden's MARS project support - Use CF Fund motion 10/12
	SUBTOTAL, REGIONAL WATER	0%	\$ -					
c	Broadband		\$ 4,000,000		\$ 2,000,000	\$ 2,000,000		Hwy 9, Deming to Glacier, Pt. Roberts (If federal match is needed we could use EDI)
	SUBTOTAL, BROADBAND	9%	\$ 4,000,000	\$ -	\$ 5,000,000	\$ 3,000,000	\$ -	
7	Public Health							
a	Public Health		\$ 3,771,969	\$ 291,778	\$ 3,480,191			2021 is in Suppl #14, \$3.5 expected for 2022
b	Health Dept Data Infrastructure		\$ 380,000		\$ 380,000			Year 1 of 3 to upgrade data systems, Mid biennium request
c	Jail Testing		\$ 435,000	\$ 137,000	\$ 298,000			Budgeted \$435K in 2021, \$298k is anticipated carryover from 2021
d	IQ Facility		\$ 956,400	\$ 892,400	\$ 64,000			Ord 2021-036 Is this being charged to FEMA instead? (Yes, remove once FEMA reimburses) 2022 is COVID transport van
e	GRACE/Alt. Response Team		\$ 850,000		\$ 850,000			Health One Team Startup
f	BH Workforce/Case Management		\$ -					
	SUBTOTAL, PUBLIC HEALTH	14%	\$ 6,393,369	\$ 1,321,178	\$ 5,072,191	\$ -	\$ -	
8	County Operations and Revenue Losses							
a	Criminal Justice Backlog		\$ 7,094,741	\$ 628,319	\$ 2,092,084	\$ 2,154,847	\$ 2,219,492	Over three years operational costs, Still need TI/Lease Ord 2021-054 + Space rent \$30k Suppl #15
b	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
c	Costs of administrating ARPA		\$ 1,155,855	\$ 161,618	\$ 321,666	\$ 331,315.98	\$ 341,255	Grants manager, grant consultant, grant compliance specialist (50%), HR Rep (50%)
d	HVAC, A/V and Facility Improve							Lynden Senior Center (250K) and Rec Center (200K)
	SUBTOTAL, County Operations and Rev Losses	20%	\$ 9,091,047	\$ 1,630,387	\$ 2,413,750	\$ 2,486,163	\$ 2,560,747	
g	Reserve/Revenue Loss							
a	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 aand Rev Losses	6%	\$ 2,568,925	\$ 1,068,925	\$ 1,500,000	\$ -	\$ -	Revenue Loss
	TOTAL, ALL REQUESTS	117%	\$ 52,028,341	\$ 8,795,490	\$ 22,985,941	\$ 15,686,163	\$ 4,560,747	
	ARPA Revenues		\$ 44,528,542	\$ 22,264,271	\$ 22,264,271	\$ -	\$ -	

\*show measurable outcomes with each indentified priority  
\*show how the funds will bring community advancement and increased outcomes  
Separate fund to include any more that is GF cost reimbursement? (TB)

Budget/funding commitments: \$ 8,024,565

Anticipated FTE commitments: \$ 7,460,660

Already Committed: \$ 15,485,225



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-611

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<b>File ID:</b>	AB2021-611	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/19/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Request for Motion		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Discussion and possible motion to recommend rescinding a previous action of the Council that established a no shooting zone in Drayton Harbor

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and possible motion to recommend rescinding a previous action of the Council that established a no shooting zone in Drayton Harbor

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### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** Adopted Ordinance 2021-061



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-185

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<b>File ID:</b>	AB2021-185	<b>Version:</b>	1	<b>Status:</b>	Adopted
<b>File Created:</b>	03/16/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	10/12/2021
<b>Agenda Date:</b>	10/12/2021			<b>Enactment #:</b>	ORD 2021-061

---

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 Aye: 4 Browne, Buchanan, Donovan, and Frazey Nay: 2 Elenbaas, and Kershner Absent: 1 Byrd	Council
05/18/2021	Council	HEARD PUBLIC TESTIMONY AND HELD IN COUNCIL Aye: 5 Browne, Buchanan, Byrd, Elenbaas, and Kershner Nay: 2 Donovan, and Frazey Absent: 0	Council Committee of the Whole
06/01/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED Aye: 6 Browne, Buchanan, Byrd, Donovan, Elenbaas, and Kershner Nay: 1 Frazey Absent: 0	
06/01/2021	Council	REFERRED TO COMMITTEE Aye: 6 Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey Nay: 0 Absent: 1 Kershner	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 Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner Nay: 0 Absent: 0	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 Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner Nay: 0 Absent: 0	Council
10/12/2021	Council	ADOPTED Aye: 4 Browne, Byrd, Elenbaas, and Kershner	

Nay: 3 Buchanan, Donovan, and Frazey  
Absent: 0

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**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. 2021-061**

**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 12th day of October, 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 8<sup>th</sup> 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

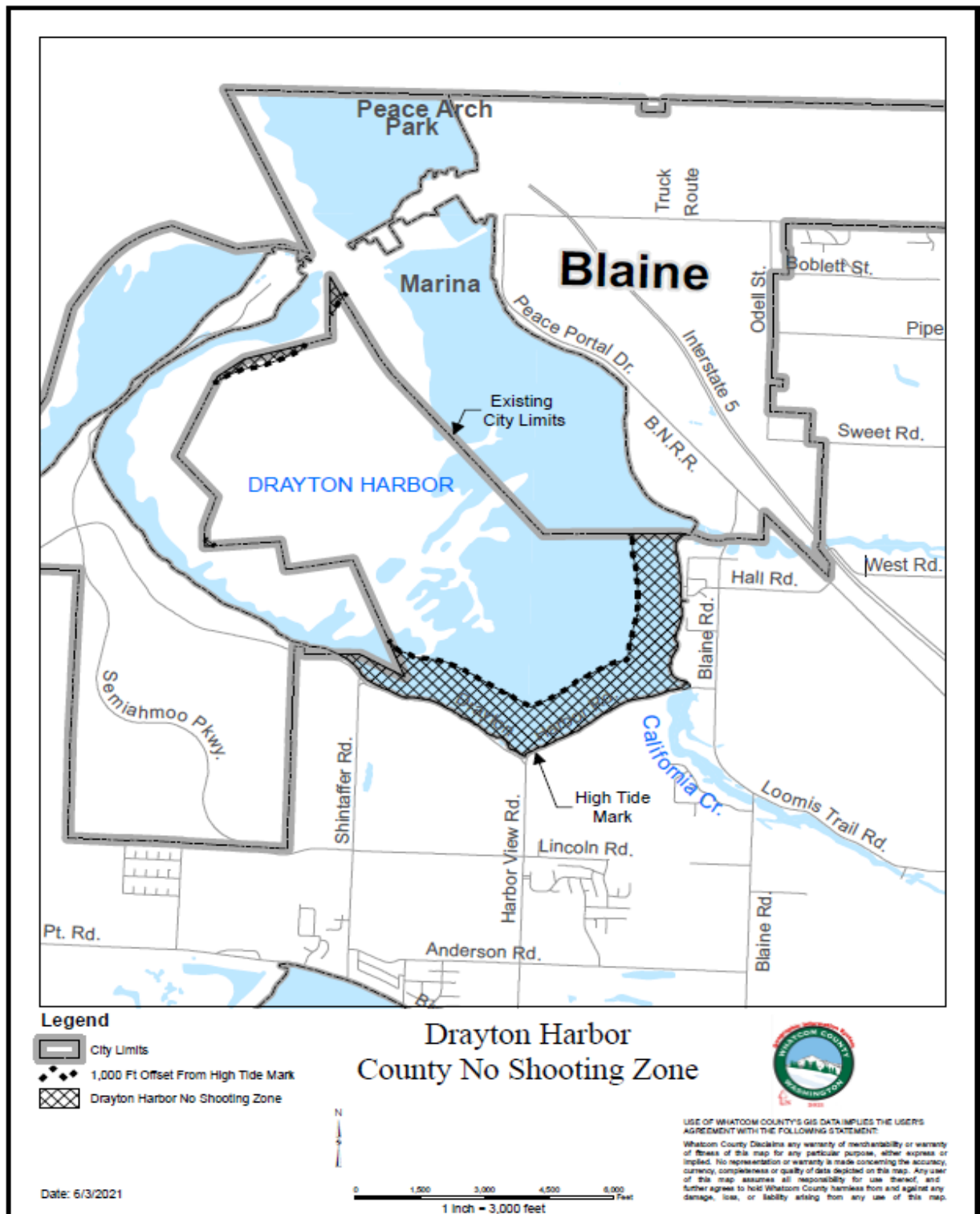
Page 1 of 1

**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.





# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2021-079

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<b>File ID:</b>	MIN2021-079	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/15/2021	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Committee of the Whole for October 12, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** Draft Minutes Committee of the Whole Oct 12 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, October 12, 2021**

**2:35 PM**

**Virtual Meeting**

**VIRTUAL MEETING - ADJOURNS BY 5 P.M. (TO PARTICIPATE, SEE  
INSTRUCTIONS AT [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL  
360.778.5010)**

### **COUNCILMEMBERS**

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

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

Council Chair Barry Buchanan called the meeting to order at 2:45 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  
Cliff Strong, Planning and Development Services Department, briefed the Councilmembers on topic number 14 and 17b from the October 12 memo (on file). He answered questions about topic number five on no net loss, whether topics eight and 18 are the place to discuss riparian buffer guidelines, and where in the documents to find new policies and information on sea level rise.  
**This agenda item was DISCUSSED.**
2. [AB2021-482](#) Presentation and discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities  
They skipped this item and came back to it later when staff was available. See action on this item below after AB2021-561.

**Committee Discussion and Recommendation to Council**

1. [AB2021-561](#) Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)  
Cathy Halka, Council Legislative Analyst, briefed the Councilmembers on the changes made to the ordinance for this meeting.  
Dana Brown-Davis, Clerk of the Council, and Councilmembers discussed pausing the meeting to make sure staff were present.  
Halka stated a motion is needed for this item and Councilmembers discussed whether this item had been introduced.  
**Browne moved and Byrd seconded that the Ordinance be RECOMMENDED FOR ADOPTION. The motion carried by the following vote:**  
**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

### **Committee Discussion**

2. [AB2021-482](#) Presentation and discussion regarding Whatcom County's proposed American Rescue Plan Act funding priorities

Browne stated he sent Councilmembers an email with comments on suggested changes for this item.

*Clerk's note:* At 3:04 p.m. Councilmembers paused the meeting to wait for staff to be available for the discussion. The meeting reconvened at 3:15 p.m.

Tyler Schroeder, Executive's Office, briefed the Councilmembers.

Frazezy stated she would like to wait to hear from the Child and Family Well-being Task Force before making a decision and Browne referred to his suggested changes that would hinge on the task force report.

Councilmembers discussed how to proceed.

Schroeder answered questions about the "Economic recovery - childcare" priorities as presented by the Administration, whether they are definitive or just placeholders, and what the Millworks facility is.

Councilmembers discussed whether they should continue discussing the item at a special meeting on October 19 or on the next regular Council meeting date on October 26.

Browne stated he would like to defer AB2021-209 (scheduled on tonight's agenda) until they work out what the spending plan is going to be.

***Buchanan moved*** to take this item up on October 19. The motion was seconded by Byrd.

Councilmembers discussed the motion.

***Buchanan amended*** his motion ***and moved*** to take this item up on October 26.

The motion carried by the following vote:

**Aye:** 7 - Donovan, Elenbaas, Frazey, Kershner, Browne, Buchanan, and Byrd

**Nay:** 0

Councilmembers and Schroeder discussed Browne's ideas for the use of American Rescue Plan Act (ARPA) funds as sent to Council by email on October 12, 2021, using ARPA funds for infrastructure when additional infrastructure dollars may come available, whether there are plans or programs to help Whatcom County citizens for whom unemployment benefits are not available, making sure the funds are used to help people in a focused way, what the three projects (Black Slough, Fish Camp, and Lynden's MARS project) for "regional water infrastructure" listed under "Invest in capital projects" are and whether Conservation Futures Fund money should be used.

**Byrd moved** to strike the line item "Regional Water Infrastructure" under "Invest in capital projects" and have it brought back forward in a separate document coming from the Conservation Futures Fund. The motion was seconded by Browne.

Satpal Sidhu, County Executive, spoke about the motion and requested that they keep flexibility in the funding that can be used.

Schroeder answered questions about the balance of the Conservation Futures Fund, other things those funds are used for, and how much of the money in the proposed spreadsheet has already been spent or allocated.

**Browne moved** to amend Byrd's motion to remove ARPA funding as a source of funding for this and leave the discussion about the allocation of Conservation Future's Fund/grants for a later date. The motion was seconded by Byrd.

Byrd suggested they remove it from ARPA funding and dedicate those projects to the Conservation Future's Fund contingent on grant revenue.

**Browne amended** his motion and moved to not fund the conservation projects with ARPA funds and do support finding an alternative funding mechanism for those projects. Byrd seconded the motion.

**Browne withdrew** his motion to amend Byrd's original motion. Byrd seconded the withdrawal.

**Byrd amended** his original motion and moved to not fund the conservation

projects with ARPA funds and support finding an alternative funding mechanism for those projects. The motion was seconded by Browne.

Councilmembers discussed the motion.

Browne and **Byrd restated** the motion to delete the allocation of ARPA money for the regional water infrastructure projects and to allow the Executive to come back with alternative funding sources later.

Schroeder answered questions.

Byrd's amended motion carried by the following vote:

**Aye:** 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan

**Nay:** 1 - Elenbaas

**This agenda item was DISCUSSED AND MOTION(S) APPROVED.**

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

2. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County

The following Child and Family Well-Being Task Force members presented:

- Jennifer Wright
- Vesla Tonnessen
- Anne Granberg
- Jamie Desmul
- Ray Deck III
- Astrid Newell
- Brian Nelson

The speakers answered questions about the cost allocation per item in the report, creating a system that is not self-sustaining if American Rescue Plan Act (ARPA) funds are used, whether the priorities in the report are ranked, whether there is a sense of what things could be done the quickest to make a noticeable difference, whether the child care funding coordinator position and the child care facility specialist within the city/county planning departments are two separate positions, whether they know how much providing centralized administrative support for childcare providers (under Priority A) will save the average childcare facility, the State's response to the childcare emergency, and engaging with Western Washington University's (WWU) economics department.

Satpal Sidhu, County Executive, also spoke about getting more information about a Community Development Financial Institution (CDFI).

***Byrd moved*** to engage WWU's economic development department and ask them to look at the options for investing in this industry. The motion ***failed*** for lack of a second.

Councilmembers and the speakers continued to discuss how long it takes to train new staff, what price level per child they are trying to attain so that the average family can afford it, deciding next steps, having a conversation about things that cannot be done (expanding family leave, providing subsidies, or giving property tax rebates), and discussing where funding will come from when ARPA funds run out.

**This agenda item was FORWARDED TO COUNCIL WITHOUT A RECOMMENDATION.**

### **Items Added by Revision**

There were no agenda items added by revision.

### **Other Business**

There was no other business.

### **Adjournment**

The meeting adjourned at 5:01 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: MIN2021-080

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<b>File ID:</b>	MIN2021-080	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/18/2021	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Regular County Council for October 12, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** Draft Minutes Council Oct 12 2021

# **Whatcom County Council**

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



## **Minutes - Draft Minutes**

**Tuesday, October 12, 2021**

**6 PM**

**Virtual Meeting**

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT  
[www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL 360.778.5010)**

### **COUNCILMEMBERS**

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

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## COUNTY COUNCIL

### CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:01 p.m. in a virtual meeting.

### ROLL CALL

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, and Kathy Kershner

**Absent:** None

### FLAG SALUTE

### ANNOUNCEMENTS

The Council is accepting applications to fill vacancies on the Stakeholder Advisory Committee for the Justice Project from citizens and criminal justice advocates. If you are interested and meet the qualifications, please let us know at 360-778-5010 or email the council at [Council@co.whatcom.wa.us](mailto:Council@co.whatcom.wa.us).

### COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, stated he would like to discuss a resolution regarding opening the border at Point Roberts.

The Councilmembers concurred to add it under the Committee Reports, Other Items, And Councilmember Updates section of the Agenda.

### MINUTES CONSENT

*Frazey moved* to accept the minutes consent items. The motion was seconded by Donovan (see votes on individual items below).

1. [MIN2021-076](#) Committee of the Whole Executive Session for September 28, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [MIN2021-077](#) Committee of the Whole for September 28, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

3. [MIN2021-078](#) Regular County Council for September 28, 2021

**Frazey moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

### **PUBLIC HEARINGS**

Council staff played a short instructional video about how to speak at the meeting.

1. [AB2021-539](#) Ordinance adopting amendments to the Six-Year Capital Improvement Program for Whatcom County Facilities (2021-2026)

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

**Byrd moved and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-058

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

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

**Byrd moved** and Frazey seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Personius answered whether this can be applied to other jurisdictions other than the area noted in Birch Bay, how to create a county Urban Growth Area (UGA) as opposed to one a city would put in place, whether this includes the expanded size on the Accessory Dwelling Units (ADUs), and whether it would extend to any of the rural zones where ADUs are allowed.

Satpal Sidhu, County Executive, urged Council to take up this matter next year and stated we need these kinds of policies throughout the county, including the cities.

Councilmembers discussed the item and Sidhu's suggestion.

**Byrd's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-059

3. [AB2021-544](#) Ordinance adopting amendments to the Unified Fee Schedule relating to density credit fees for increasing the size of accessory dwelling units

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers and answered a question about what the fee was before.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

**Byrd moved and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-060

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

Buchanan opened the Public Hearing and the following person spoke:

- Tino Villaluz

**Byrd moved** for the right to ask a question of the speaker.

Councilmembers discussed the motion and whether the rules allow for questions of the speakers during public hearings.

The following people answered a question about being able to ask questions of speakers:

- Dana Brown-Davis, Clerk of the Council
- Karen Frakes, Prosecuting Attorney's Office

Byrd stated his request does not require a vote and was permitted by the Chair to ask a question. He proceeded with asking Villaluz about the version of the ordinance which is being considered.

Councilmembers discussed the rules again then continued the public hearing and the following people spoke:

- Frank Bob
- Ken Domorod

Hearing no one else, Buchanan closed the Public Hearing.

**Browne moved** and Byrd seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the motion.

**Browne's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:**

**Aye:** 4 - Browne, Byrd, Elenbaas, and Kershner

**Nay:** 3 - Buchanan, Donovan, and Frazey

**Absent:** 0

Enactment No: ORD 2021-061

5. [AB2021-414](#) Ordinance granting Cascade Natural Gas Corporation a franchise for the transportation of natural gas in Whatcom County

Buchanan opened the Public Hearing and the following people spoke:

- David Gutschmidt
- Simon Bakke

Hearing no one else, Buchanan closed the Public Hearing.

**Donovan moved** that this item be tabled in order for Whatcom County Public Works Department to continue negotiating the franchise agreement with Cascade Natural Gas in order to reconsider the terms of the agreement including but not limited to the length of the agreement. And note that Council requests that Public Works consult with members of the Climate Impact Advisory Committee during this process. The motion was seconded by Frazey.

Councilmembers discussed the motion and Satpal Sidhu, County Executive, spoke.

The motion carried by the following vote:

**Aye:** 4 - Frazey, Browne, Buchanan, and Donovan

**Nay:** 3 - Elenbaas, Kershner, and Byrd

Byrd made a point of order that a motion to table requires a supermajority to pass.

**Donovan moved** that they *hold* this in order for Whatcom County Public Works Department to continue negotiating the franchise agreement with Cascade Natural Gas in order to reconsider the terms of the agreement including but not limited to the length of the agreement. And note that Council requests that Public Works consult with members of the Climate Impact Advisory Committee during this process.

Councilmembers discussed the motion and how much time is needed for the request.

Andrew Hester, Public Works Department, answered the question about time needed.

**Donovan amended** his motion to hold the item until the second meeting in January. They can change it if more time is needed.

Councilmembers discussed the motion and Hester answered questions.

Christopher Quinn, Prosecuting Attorney's Office, suggested that they hold

a committee work session to provide guidance on changes they would like to see such as term and franchise fees.

*Byrd suggested* a friendly amendment to hold this until the next Planning and Development or Natural Resources Committee meeting so that Mr. Quinn and the rest of the staff can ask the questions he just expressed.

*Donovan did not accept* the friendly amendment.

Donovan's motion carried by the following vote:

**Aye:** 6 - Kershner, Browne, Buchanan, Byrd, Donovan, and Frazey

**Nay:** 1 - Elenbaas

**Final action for this agenda item was: HEARD PUBLIC TESTIMONY AND HELD (see full motion above).**

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

The following people spoke:

- Robert Bystrom
- Melissa Wisener
- David Spring
- Janet Migaki
- Ray Deck III
- Ken Domorod
- Megan Wiseman
- Shannon Wallace
- Skip Hamilton
- Kelley Bouma
- Misty Flowers
- Jacqueline Soler
- Richard Tran
- Cynthia Thompson
- Christie Duque
- Rebecca Wilson
- Jim (no last name given)
- Nancy Bergman
- Jean Purcell
- Sarah Rose
- Natalie Chavez
- Helga Deliban

- Clayton Duke
- Megan Jones
- Nancy Hill
- Renee Norton
- Hannah Ordos
- Enoch Mann
- Gail Adderley

Hearing no one else, Buchanan closed the Open Session.

## **CONSENT AGENDA**

(From Council Finance and Administrative Services Committee)

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through eight. Councilmembers voted on those items (see votes on individual items below).

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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

2. [AB2021-564](#) 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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

4. [AB2021-566](#) 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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

6. [AB2021-568](#) 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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

Absent: 0

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

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

Absent: 0

8. [AB2021-589](#) 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

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

Absent: 0

## **OTHER ITEMS**

**(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)

***Browne* reported for the Finance and Administrative Services Committee and *moved* that the Contract (FCZDBS) be AUTHORIZED.**

Councilmembers discussed the item.

**Browne's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

2. [AB2021-547](#) Ordinance amending the 2021 Whatcom County Budget, request no. 15, in the amount of \$859,440

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED.

Councilmembers discussed the motion.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2021-062

3. [AB2021-549](#) Ordinance establishing the Central Plaza Tenant Improvements Fund and establishing a project based budget for the Central Plaza Tenant Improvements Project

**Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2021-063

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)

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

Absent: 0

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)

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

Absent: 0

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)

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract (FCZDBS) be AUTHORIZED.

Councilmembers voted (see votes below).

After the vote Councilmembers discussed the goals and measurables in the contract.

**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

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

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Browne

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

8. [AB2021-561](#) Ordinance amending Ordinance No. 2021-045 (Review of Response to COVID-19 Pandemic)

Browne reported for the Committee of the Whole.

**Browne moved and Donovan seconded that the Ordinance be ADOPTED.**

**The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2021-064

9. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County

Buchanan reported for the Committee of the Whole.

Councilmembers discussed the item, whether it should be held in Council and what additional information they would like to get including:

- Getting more concrete examples of costs
- Sources of sustainable funding going forward after using the American Rescue Plan Act (ARPA) funds
- Looking at the median wage in Whatcom County to determine how much the cost of childcare should be and whether the proposed items will have an impact on driving the cost down

Councilmembers discussed first determining what is viable under law and then letting the task force know, working on solutions that will stick when the money runs out, and a concern about creating a short-term benefit to the current players but a long-term detriment to the community.

Satpal Sidhu, County Executive, stated they are not spending the money now, just making allocations. Affordable housing also needs attention and is more permanent and sustainable. Balance the expectations in the community for both of these needs.

Councilmembers continued to discuss the item.

**Byrd moved** to reach out to Western Washington University's (WWU) Economics Department and ask that they review the suggestions and come back with a report on what would have the biggest impact and what might not have a good impact at all so we can figure out what the best options are. The motion was seconded by Elenbaas.

Councilmembers discussed the motion.

**Byrd restated** his motion **and moved** to request Western Washington University's Economic development team to review the options in the industry and provide feedback on which items or action would have the biggest impact.

Councilmembers continued to discuss the motion and which department he intended in his motion.

Donovan stated it is the Center for Economic and Business Research.

Satpal Sidhu, County Executive, suggested they give it back to the task force to find a source and firm up their numbers.

After more discussion, **Byrd withdrew** his motion and referred it to the task force.

Buchanan stated he would like to do another work session with the task force. One could be scheduled for the next meeting.

Councilmembers discussed getting feedback from Health Department staff and ways to create more childcare capacity.

Councilmembers concurred to refer this item to an October 26 work session.

**This agenda item was REFERRED TO COMMITTEE.**

**(No Committee Assignment)**

10.     [AB2021-538](#)     Resolution setting regular Whatcom County Council meeting dates for 2022
- Frazey** moved and Donovan seconded that the Resolution (Option 3) be APPROVED.

Dana Brown-Davis, Clerk of the Council, explained the difference between the three options and Councilmembers discussed the motion.

**Frazey's motion that the Resolution (Option 3) be APPROVED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2021-043

## **INTRODUCTION ITEMS**

***Byrd moved*** and Donovan seconded that items 1-5 be introduced.

Kershner stated she would like to consider AB2021-590 separately so the first motion was *withdrawn*.

***Donovan moved*** to introduce items 1, 2, 4, and 5. The motion was seconded by Browne (See votes on individual items below).

1. [AB2021-582](#) Ordinance amending the 2021 Whatcom County Budget, request no. 16, in the amount of \$411,953

**Donovan moved and Browne seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [AB2021-572](#) Ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions

**Donovan moved and Browne seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

3. [AB2021-590](#) 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

This item was considered separately. See motion and vote on item below.

4. [AB2021-576](#) Resolution adopting the 2022 Annual Construction Program (ACP)

**Donovan moved and Browne seconded that the Resolution 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. [AB2021-583](#) 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)

**Donovan moved and Browne seconded that the Resolution (FCZDBS) be INTRODUCED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

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

***Donovan moved*** and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING.

Councilmembers discussed the motion, finding out from the Planning and Development Services Department what density of marijuana facilities we have in Whatcom County versus other counties, and how close they are to ironing out the permanent ordinance.

Dana Brown-Davis, Clerk of the Council, stated the next stop for this file would be a public hearing at the next meeting and asked if they would like to schedule it for discussion in committee that day to get questions answered. She answered which ordinance (this one or the one with proposed code language) would be discussed in Committee.

Councilmembers concurred to schedule this file for the Planning and Development Committee.

**Donovan's motion that the Ordinance Requiring a Public Hearing be**

**INTRODUCED FOR PUBLIC HEARING carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

**Nay:** 2 - Elenbaas, and Kershner

**Absent:** 0

**COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

Councilmembers gave committee reports.

Buchanan reported on the Criminal Justice and Public Safety Committee and a motion to reconvene on October 19 to discuss Superior Court vaccine mandates.

***Buchanan moved*** that the Council reconvene on this subject (Superior Court vaccine mandates) when we have legal counsel available next Tuesday, October 19. The motion was seconded by Byrd.

Karen Frakes, Prosecuting Attorney's Office, addressed a comment about having an attorney present that is outside of having a conflict of interest.

Councilmembers discussed the motion and the time for the meeting (10:30 a.m.).

The motion carried by the following vote:

**Aye:** 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

**Nay:** 0

Councilmembers continued reports from Committee.

1. [AB2021-597](#) Resolution requesting a Presidential Executive Order to open the border to allow access to Canadian property owner in Point Roberts USA

Satpal Sidhu, County Executive, briefed the Councilmembers and answered questions.

He and Councilmembers discussed whether the resolution is still needed since the news is reporting that the United States is going to relax the restrictions on the border in early November.

**Buchanan moved and Byrd seconded 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 2021-044

**COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

**Continued**

Councilmembers and Satpal Sidhu, County Executive, discussed whether there would be support for a ban on vaccine mandates in our community, parliamentary motions and procedure for interacting with speakers during a public hearing, getting a Health Department update, and what it will take to get out of the emergency (COVID-19).

Action Taken in COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES: Motion approved 7-0 that the Council reconvene on Superior Court vaccine mandates when we have legal counsel available next Tuesday, October 19.

**ADJOURN**

The meeting adjourned at 10:53 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: MIN2021-081

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<b>File ID:</b>	MIN2021-081	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/19/2021	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Special Committee of the Whole Executive Session for October 19, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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**Attachments:** Draft Minutes Special Committee of the Whole Exec Oct 19 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, October 19, 2021  
10:30 AM  
Virtual Meeting**

**VIRTUAL MEETING (SPECIAL)**

### **COUNCILMEMBERS**

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

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## **Call To Order**

Council Chair Barry Buchanan called the meeting to order at 10:31 a.m. in a virtual meeting.

## **Roll Call**

**Present:** 6 - Rud Browne, Barry Buchanan, Tyler Byrd, Ben Elenbaas, Carol Frazey, and Kathy Kershner

**Absent:** 1 - Todd Donovan

## **Announcements**

## **Committee Discussion**

**Attorney Present:** Chris Quinn.

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110(1)(i)(iii). Executive session will conclude no later than 12 p.m. If the meeting extends beyond the stated conclusion time, Council staff will make a public announcement.

The following people answered whether the meeting could continue as a public meeting if Councilmembers do not vote to go into executive session.

- Cathy Halka, Council Legislative Analyst
- Christopher Quinn, Prosecuting Attorney's Office

**Byrd moved** to go into executive session until no later than 12 p.m. to discuss the agenda items pursuant to the RCW citations as announced by the Council Chair. The motion was seconded by Buchanan.

Councilmembers discussed the motion.

The motion carried by the following vote:

**Aye:** 6 - Browne, Buchanan, Byrd, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 1 - Donovan

1. [AB2021-603](#) Discussion with Senior Civil Deputy Prosecutor Christopher Quinn regarding vaccine mandates and legal questions [discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)(iii)]

**This agenda item was DISCUSSED.**

## **Items Added by Revision**

There were no agenda items added by revision.

**Other Business**

**Adjournment**

The meeting adjourned at 11:52 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-572

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<b>File ID:</b>	AB2021-572	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	09/24/2021	<b>Entered by:</b>	AHester@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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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

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

---

**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

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▪ **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.  
47

- 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

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**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.~~

~~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 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 whoas do own  
22 property within a one-mile radius of the road to be vacated.  
23  
24 ~~EG.~~ 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

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~~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 yes 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 pay submits 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 Auditor. If the  
33 petitioner applicant fails to make a payment as required, the Council'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: AB2021-576

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<b>File ID:</b>	AB2021-576	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	09/27/2021	<b>Entered by:</b>	SMock@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Resolution Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council

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**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 *EaX*

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

Date: September 29, 2021

Re: 2022 Annual Construction Program (ACP)

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**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 1<sup>st</sup> 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 26<sup>th</sup> 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.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information				Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds			PE & CE (\$95.10)	Right of Way (\$95.20)	Estimated Expenditures Dollars		Grand Total (All 95)	
				Road Name	BMP	EMP	FFC				County Road Funds	Other Funds Amount	Program Source			Contract	County Forces		
1	R1	CRP #907001 Birch Bay Drive & Pedestrian Facility from Lora Lane to Cedar Avenue	20010	Road Name: Birch Bay Drive From: Lora Lane To: Cedar Avenue	2.68	4.26	17	1.58	P&T FP DR Other	S	\$350,000			\$200,000		\$150,000	\$0	\$350,000	
2	R2	CRP #914002 East Smith Road & Hannegan Road	55080	Road Name: East Smith Road To: Hannegan Road	1.86	2.06	07	0.40	3R IS Illum Safety	S	\$2,300,000	\$1,000,000.00	HSIP	\$400,000	\$150,000	\$3,750,000		\$4,300,000	
			55110	Road Name: Hannegan Road From: East Smith Road To: Hannegan Road	1.86	2.06	07						\$1,000,000.00	STP(R)					
3	R3	CRP #917001 Marine Drive, Locust Avenue to Alderwood Avenue	12790	Road Name: Marine Drive From: Locust Avenue To: Alderwood Avenue	3.92	4.57	16	0.65	RC SW P&T Safety	S	\$1,041,000	\$2,509,000.00	STP(UL)	\$400,000	\$50,000	\$3,100,000		\$3,550,000	
4	R4	CRP #919005 Samish Way/Galbraith Lane	44060	Road Name: Samish Way From: Samish Way To: Galbraith Lane	1.41	1.68	17	0.27	IS Other Safety Illum	S	\$60,000			\$10,000	\$10,000	\$30,000	\$10,000	\$60,000	
			44060	Road Name: Galbraith Lane From: 0 To: 0	0.00	0.00	09												
5	R5	CRP #921022 Marshall Hill Road Slide Repair/Culvert Replacement	89260	Road Name: Marshall Hill Road From: Marshall Hill Rd. To: Marshall Hill Rd.	0.60	0.70	09	0.10	3R Other	S	\$725,000			\$100,000	\$25,000	\$590,000	\$10,000	\$725,000	
6	R6	CRP #906001 Birch Bay Lynden Rd. & Blaine Rd.	21580	Road Name: Birch Bay Lynden Rd. From: Birch Bay Lynden Rd. To: Blaine Rd.	1.00	1.25	17	0.25	IS Illum SW Safety 3R	S	\$650,000			\$400,000	\$250,000			\$650,000	
7	R7	CRP #918019 Smith Road & Northwest Drive	75080	Road Name: Smith Road From: 0 To: 0	1.40	1.60	16	0.40	RC IS Illum Safety	S	\$25,000			\$25,000				\$25,000	
			74050	Road Name: Northwest Drive From: 0 To: 0	3.50	3.70	16												
8	R8	CRP # 920016 Chief Martin Road, Cagey Road to Kwina Road	14110	Road Name: Chief Martin Road From: Cagey Road To: Kwina Road	0.00	2.50	06	2.50	3R Safety	S	\$100,000			\$100,000				\$100,000	
9	R9	CRP #914001 Slater Road & Northwest Drive	14760	Road Name: Slater Road From: Slater Road To: Northwest Drive	8.00	8.29	16	0.40	RC FP IS Illum Safety	S	\$5,000			\$5,000				\$5,000	
			74050	Road Name: Northwest Drive From: Slater Road To: Northwest Drive	2.27	2.38	16												
10	R10	CRP #922018 Birch Bay Drive Crosswalk	20010	Road Name: Birch Bay Drive From: Birch Bay Drive To: Birch Bay Drive	3.29	3.30	16	0.01	Safety Other	S	\$50,000			\$50,000				\$50,000	
11	R11	CRP #912017 Lummi Nation Transportation Projects						N/A			\$2,000,000			\$350,000	\$150,000	\$1,500,000		\$2,000,000	
12	R12	CRP 910002 Point Roberts Transportation Improvements						N/A			\$150,000			\$50,000		\$90,000	\$10,000	\$150,000	
13	R13	CRP #916007 Hemmi Road Flood Mitigation	56320	Road Name: East Hemmi Road From: East Hemmi Road To: East Hemmi Road	2.30	2.60	08	0.30	2R DR Other	S	\$125,000			\$25,000		\$90,000	\$10,000	\$125,000	

(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 #	Road Segment Information				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	County Forces	Grand Total (All 595)
				Road Name	BMP	EMP	FFC									Contract		
14	R14	CRP #915014 Innis Creek Road	88850	Road Name: Innis Creek Road From: Innis Creek Road To: Innis Creek Road	2.45	2.65	09	0.20	2R DR Other Safety	S	\$10,000			\$10,000				\$10,000
15	R15	CRP #921001 Birch Bay Drive, Jackson Road to Shintaffer Road	20010	Road Name: Birch Bay Drive From: Jackson Road To: Shintaffer Road	2.10	4.53	07	2.43	3R Safety	E	\$1,750,000			\$250,000		\$1,490,000	\$10,000	\$1,750,000
16	R16	CRP #921002 Marine Drive II, Alderwood Avenue to Bridge No. 172	12790	Road Name: Marine Drive From: Alderwood Avenue To: Bridge No. 172	3.37	3.92	06	0.55	RC P&T	S	\$15,000			\$15,000				\$15,000
17	R17	CRP #915013 Turkington Road/Jones Creek	89200	Road Name: Turkington Road From: Turkington Road To: Turkington Road	0.40	0.60	09	0.20	RC Other	S	\$54,000			\$54,000				\$54,000
18	R18	CRP #921003 Truck Road, 2020 Flood Damage Repair	89200	Road Name: Truck Road From: Truck Road To: Truck Road	0.40	0.60	16	0.20	3R K	S	\$37,000			\$37,000				\$37,000
19	R19	CRP 919002 Abbott Road/Levee Improvements	55560	Road Name: Abbott Road From: Abbott Road To: Abbott Road	1.70	1.90	09	0.20	RC Other	S	\$155,000			\$155,000				\$155,000
20	R20	CRP #919001 Ferndale Road/Levee Improvements	12800	Road Name: Ferndale Road From: Ferndale Road To: Ferndale Road	2.50	3.82	08	1.32	Other	S	\$50,000			\$50,000				\$50,000
21	R21	CRP #921004 Lake Louise, Austin Street to Lake Whatcom Boulevard	46010	Road Name: Lake Louise Road From: Austin Street To: Lake Whatcom Blvd.	0.00	4.06	18	4.06	3R Safety	E	\$25,000			\$25,000				\$25,000
22	R22	CRP #921005 Austin Street, Lake Louise Street to Cable Street	46020	Road Name: Austin Street From: Lake Louise To: Cable Street	0.00	0.37	16	0.37	3R SW Safety	S	\$25,000			\$25,000				\$25,000
23	R23	CRP #922001 Northwest Drive, Slater Rd. To Axton Rd.	73680	Road Name: Northwest Drive From: Slater Road To: Axton Road	2.38	4.65	16	2.27	3R	E	\$15,000			\$15,000				\$15,000
24	R25	CRP #922002 Hampton Road, City of Lynden UAB to Van Buren	61700	Road Name: Hampton Road From: City of Lynden UAB To: Van Buren	0.14	4.79	06	4.65	3R	E	\$5,000	\$20,000.00	RAP	\$25,000				\$25,000
25	R28	CRP #921019 Lakeway Drive Corridor Improvements	45690	Road Name: Lakeway Drive From: Lakeway Drive To: Lakeway Drive	0.00	1.39	16	1.39	Other P&T Safety	E	\$50,000			\$50,000				\$50,000
26	R29	CRP #908011 Lincoln Road/Harborview Road to Blaine Road	26190	Road Name: Lincoln Road From: Harborview Road To: Blaine Road	0.00	1.00	18	1.00	RC NEW Other	S	\$5,000			\$5,000				\$5,000
27	R31	CRP #922003 Small Area Paving						N/A	3R 2R	E	\$350,000			\$50,000		\$290,000	\$10,000	\$350,000
28	R34	CRP #921007 South Pass Road	66040	Road Name: South Pass Road From: South Pass Road To: South Pass Road	3.50	3.65	16	0.15	2R Safety	E	\$20,000	\$20,000.00	ER	\$40,000				\$40,000
29	R36	CRP #922004 Birch Bay Drive/Lora Lane Culvert Replacement	20010	Road Name: Birch Bay Drive From: Birch Bay Drive To: Lora Lane	2.68	2.69	17	0.01	DR	S	\$30,000			\$30,000				\$30,000
30	R37	CRP #922005 Birch Bay Lynden Rd/Kickerville Rd.	21580	Road Name: Birch Bay Lynden Rd. From: Birch Bay Lynden Rd. To: Kickerville Rd.	1.89	2.09	07	0.40	IS 3R Safety	S	\$5,000			\$5,000				\$5,000
			21850	Road Name: Kickerville Rd. From: Kickerville Rd. To: Birch Bay Lynden Rd.	5.43	5.63	08											
31	R38	CRP #922006 Corridor Intersection Alts Analysis						N/A	IS	S	\$5,000			\$5,000				\$5,000
32	R39	CRP #921020 Deer Trail Slide Damage Repair	26350	Road Name: Deer Trail From: Deer Trail To: Deer Trail	0.35	0.91	09	0.56	Other	S	\$130,000			\$30,000		\$90,000	\$10,000	\$130,000
33	B2	CRP #917004 Jackson Road/Terrill Creek Bridge No. 81	21950	Road Name: Jackson Road From: Jackson Road To: Jackson Road	0.00	0.10	18	0.10	Br	S	\$250,000			\$200,000	\$50,000			\$250,000
34	B4	CRP #913006 North Lake Samish Bridge No. 107	84190	Road Name: North Lake Samish From: North Lake Samish To: North Lake Samish	0.01	0.11	08	0.10	Br P&T	S	\$25,000	\$7,400,000.00	BR	\$425,000		\$7,000,000		\$7,425,000

(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 #	Road Segment Information				Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds			PE & CE (\$95.10)	Right of Way (\$95.20)	Estimated Expenditures Dollars		Grand Total (All \$95)		
				Road Name	BMP	EMP	FFC				County Road Funds	Other Funds				Contract	County Forces			
												Amount	Program Source							
35	B5	CRP #920003 Goshen Road/Anderson Creek Bridge No. 248	56140	Road Name: Goshen Road From: Goshen Road To: Goshen Road	0.56	0.76	08	0.20	Br	S	\$20,000	\$200,000.00	BR	\$200,000	\$20,000				\$220,000	
36	B10	CRP #919006 Mosquito Lake Road/Hutchinson Creek Tributary	84190	Road Name: Mosquito Lake Road From: Mosquito Lake Road To: Mosquito Lake Road	3.10	3.20	08	0.10	FP	S	\$610,000			\$50,000	\$10,000	\$535,000	\$15,000		\$610,000	
37	B11	CRP #919007 North Fork Road/Kenney Creek	89510	Road Name: North Fork Road From: North Fork Road To: North Fork Road	1.00	1.10	09	0.10	FP	S	\$70,000	\$200,000.00	FBRB	\$250,000	\$20,000				\$270,000	
38	B12	CRP #921008 Deal Road/Fish Passage	89300	Road Name: Deal Road From: Deal Road To: Deal Road	0.00	0.10	09	0.10	FP	S	\$95,000			\$75,000	\$20,000				\$95,000	
39	B13	CRP #922007 Fox Road/California Creek Fish Passage	22920	Road Name: Fox Road From: Fox Road To: Fox Road	1.07	1.17	09	0.10	FP	S	\$155,000			\$150,000	\$5,000				\$155,000	
40	B14	CRP #921021 Nulle Road/Friday Creek Bridge No. 106	41830	Road Name: Nulle Road From: Nulle Road To: Nulle Road	0.15	0.25	09	0.10	3R	S	\$600,000			\$100,000		\$490,000	\$10,000		\$600,000	
41	F1	CRP #919008 Replacement of Whatcom Chief & Terminal Modification						N/A	Ferry	E	\$649,000			\$649,000					\$649,000	
42	F2	CRP #914015 Lummi Island Breakwater Replacement						N/A	Ferry	E	\$1,265,000	\$885,000.00	FBP	\$150,000		\$2,000,000			\$2,150,000	
43	F3	CRP #919009 Relocation of Gooseberry Terminal						N/A	Ferry	E	\$50,000			\$50,000					\$50,000	
44	Y1	CRP #922008 Various Bridge Rehabilitation/Replacement						N/A	Br	S	\$300,000			\$50,000		\$250,000			\$300,000	
45	Y2	CRP #922009 Right of Way Acquisition						N/A		E	\$50,000				\$50,000				\$50,000	
46	Y3	CRP #922010 Unanticipated Site Improvements						N/A		E	\$300,000			\$30,000		\$260,000	\$10,000		\$300,000	
47	Y4	CRP #922011 Unanticipated Stormwater Quality Improvements						N/A		S	\$120,000			\$20,000		\$90,000	\$10,000		\$120,000	
48	Y5	CRP #922012 Unanticipated Non-motorized Transportation Improvements						N/A	SW P&T Safety	I	\$60,000			\$10,000		\$40,000	\$10,000		\$60,000	
49	Y6	CRP #922013 Fish Passage Projects						N/A	FP	S	\$50,000			\$50,000					\$50,000	
50	Y7	CRP #922014 Swift Creek Transportation Impacts						N/A			\$100,000			\$10,000		\$90,000			\$100,000	
51	Y8	CRP #922015 Railroad Crossing Improvements						N/A	Other 2R Safety	I	\$200,000			\$50,000		\$140,000	\$10,000		\$200,000	
52	Y9	CRP #922016 Beam Guardrail Replacements/Upgrades						N/A	Safety	I	\$350,000			\$50,000		\$290,000	\$10,000		\$350,000	
53	Y10	CRP #922017 ADA Barrier Removal						N/A	SW	E	\$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

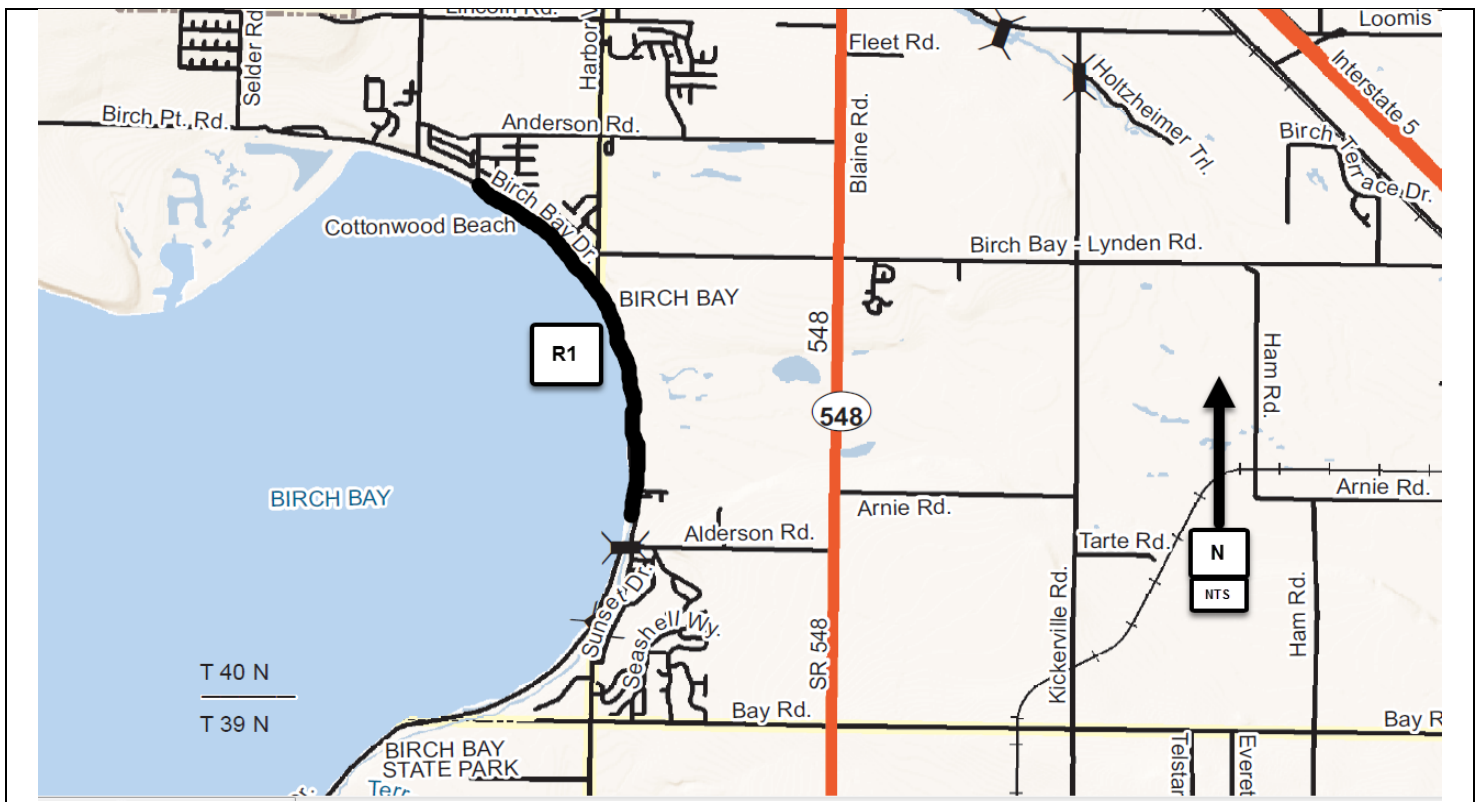
Whatcom County-Shorelines; WDFW-HPA, Army Corps of Engineers, DOE; Sec 404 Clean Water Act; NEPA

### 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.

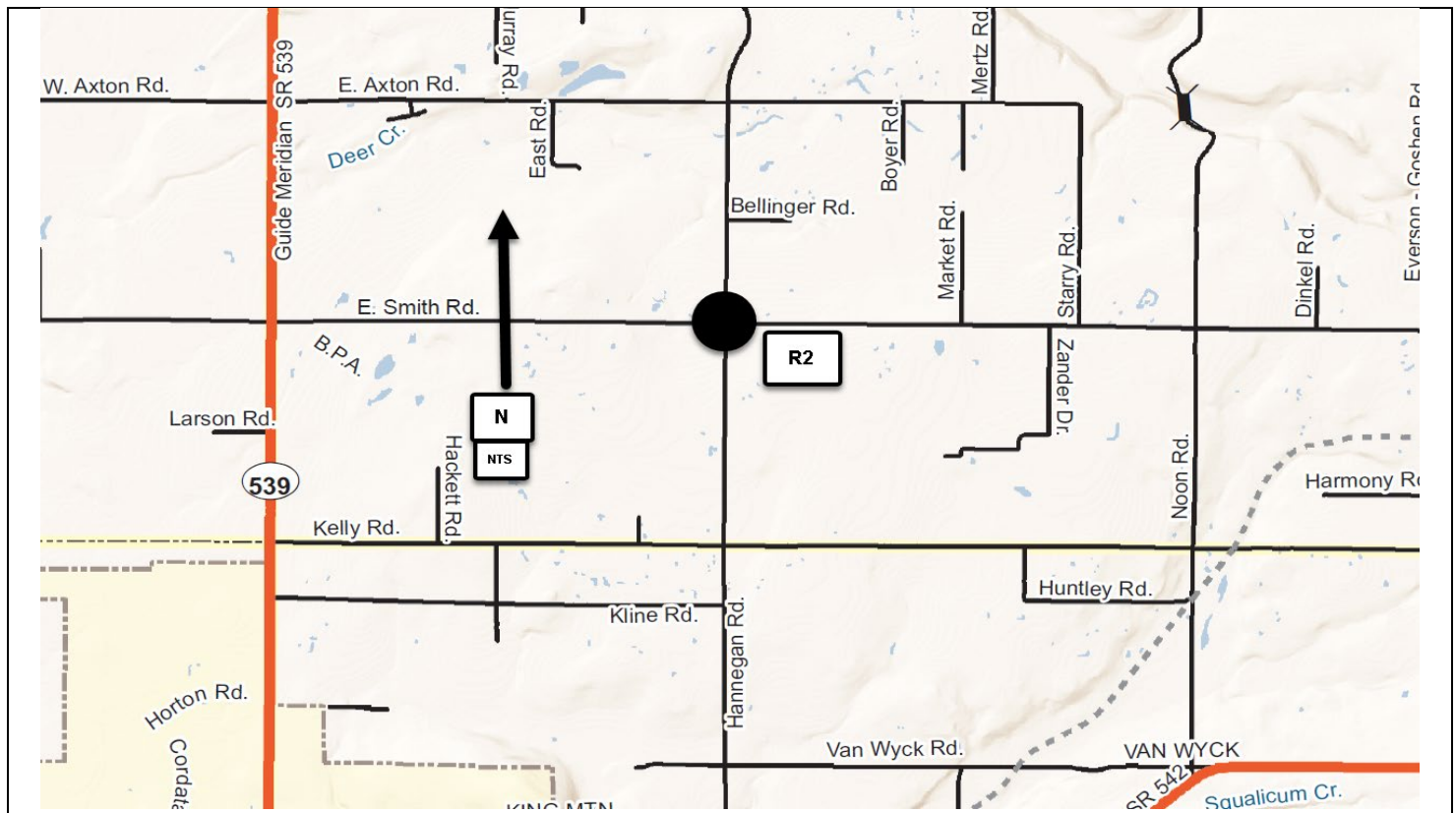
**Total Estimated Project Cost:** \$4,300,000

**Expenditures to Date:** \$461,000

**Funding Sources:**

Federal	\$2,000,000 ST/HSIP available in 2021
State	\$0
Local	\$2,300,000

<b>Environmental Permitting</b>	NEPA, ESA, Corp of Engr, Clrg/CAO, DOE
<b>Right-of-Way Acquisition (Estimate)</b>	\$350,000
<b>County Forces (Estimate)</b>	N/A



**Marine Drive  
Locust Avenue to Alderwood Avenue  
Reconstruction and Bike/Ped Facilities  
CRP # 917001**

**Construction Funding Year(s):** 2022

**Project Narrative:**

This Marine Drive project is located between Locust Ave. and Alderwood Avenue in Section 15 of T38N, R2E. The work involves reconstruction of approximately 0.6 mile of roadway with emphasis on bike/pedestrian and stormwater quality enhancements. This project is listed **#R3** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Construction contract awarded in summer of 2021, with construction expected to begin in fall 2021 and continue into 2022.

**Total Estimated Project Cost:** \$4,177,000

**Expenditures to Date:** \$550,000

**Funding Sources:**

Federal	\$2,510,000 (STBG and TA)
State	\$0
Local	\$1,667,000

**Environmental Permitting** ECS, BA, SEPA, CLR/CAO, Corps of Engrs

**Right-of-Way Acquisition (Estimate)** \$50,000

**County Forces (Estimate)** N/A



## Samish Way & Galbraith Lane Pedestrian Crosswalk CRP # 919005

**Construction Funding Year(s):** 2022

**Project Narrative:**

Construct a pedestrian-actuated crosswalk for access across Samish Way at Galbraith Lane in response to the City of Bellingham's expansion of the upper Lake Padden parking lot on Samish Way. The existing and projected high use of this parking lot for mountain bike and pedestrian use will result in numerous pedestrians and bikes crossing Samish Way. This project is listed **#R4** on the 2022-2027 Six Year Transportation Improvement Program.

**Project Status:**

Currently working with the City of Bellingham to provide an in-house design for the pedestrian-actuated crosswalk. COB plans to install the crosswalk with their traffic signal crews, and construction is planned in 2022.

**Total Estimated Project Cost:** \$ 60,000

**Expenditures to Date:** \$20,400

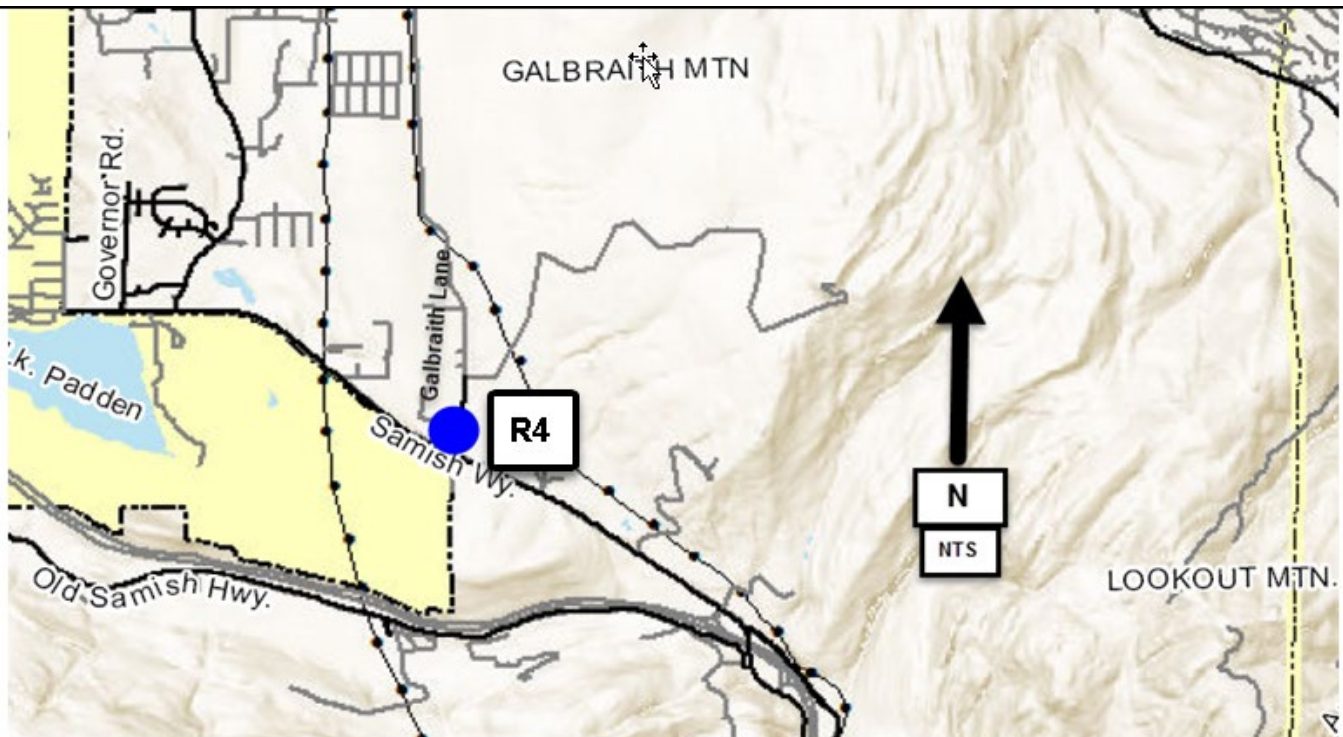
**Funding Sources:**

Federal	\$0
State	\$0
Local	\$60,000

<b>Environmental Permitting</b>	SEPA, Land Disturbance, Critical Areas
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<b>Right-of-Way Acquisition (Estimate)</b>	\$10,000
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<b>County Forces (Estimate)</b>	TBD
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## Marshall Hill Slide Damage Repair

### Slide Repair

### CRP # 921022

**Construction Funding Year(s):** 2022

**Project Narrative:**

This Marshall Hill project is located between Cronk Road and SR 542 in Section 32 of T39N and R5E. This project will replace a culvert and repair slide damage. This project is listed **#R5** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Geotechnical report and evaluation of failing culvert has been completed. Design work progressing on culvert replacement and slope stabilization. Roadway may remain closed in this area over winter of 2021-2022; however, still evaluating.

**Total Estimated Project Cost:** \$725,000

**Expenditures to Date:** \$35,000

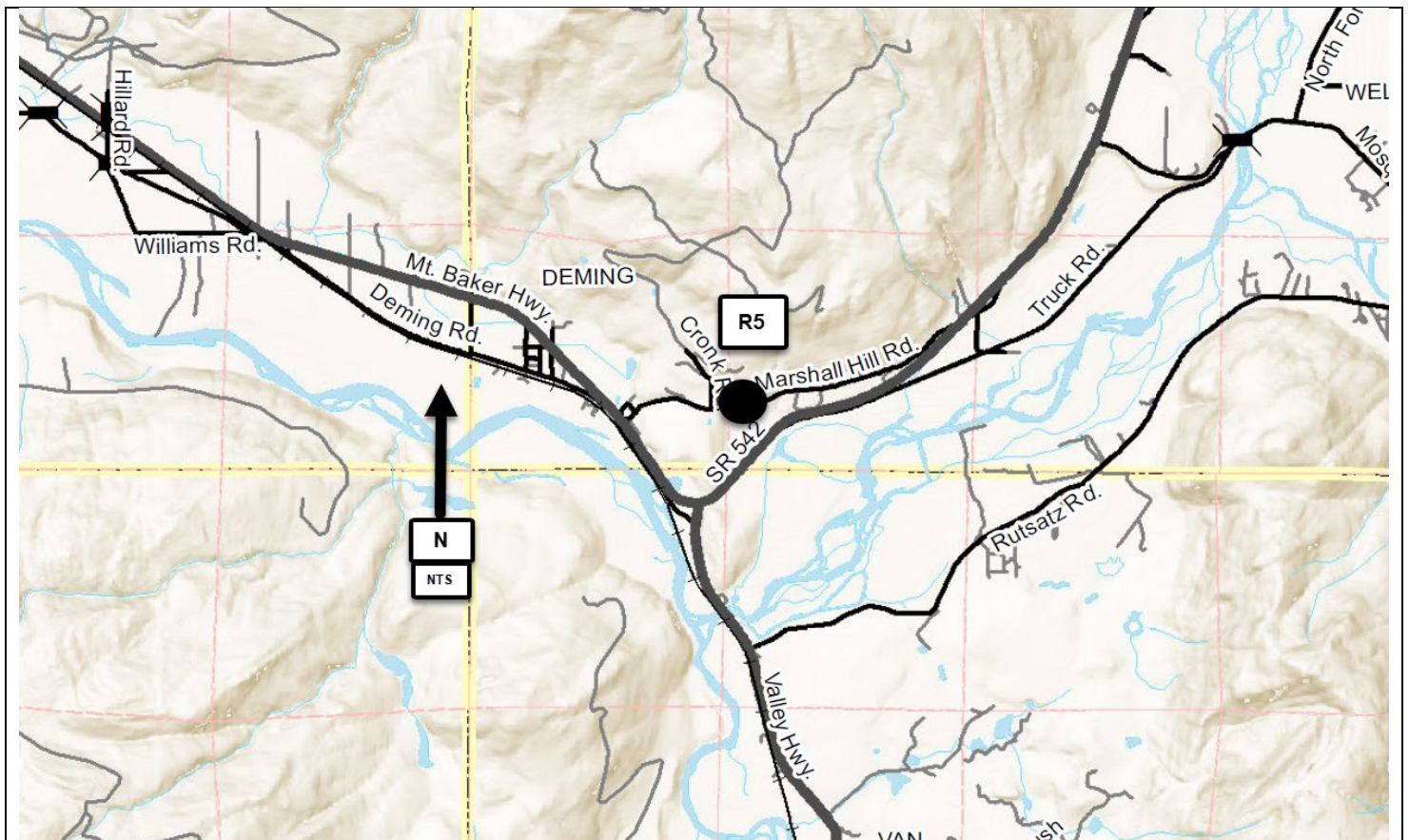
**Funding Sources:**

Federal	\$0
State	\$
Local	\$725,000

**Environmental Permitting** SEPA

**Right-of-Way Acquisition (Estimate)** N/A

**County Forces (Estimate)** N/A



# Birch Bay Lynden Rd. & Blaine Rd. Intersection Improvements CRP # 906001

**Construction Funding Year(s):** 2024

**Project Narrative:**

This project is located 4.6 miles south of Blaine, at the corners common to Sections 19, 20, 29, and 30, T40N, R1E. Intersection improvements being considered are a roundabout or a signal. This is a joint project with the Washington State Department of Transportation; however, it is unlikely that they will participate as a funding source. This project is listed **#R6** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Survey work and R/W Plan started. Consultant contract complete to evaluate & decide on preferred design alternative, which was a roundabout. Applied for and received federal STBG funding of \$800K which is available in 2023-2024. Final design consultant selected, and proceeding with final design in late 2021. Additional grant funds will be looked for through other sources.

**Total Estimated Project Cost:** \$5,050,000

**Expenditures to Date:** \$89,000

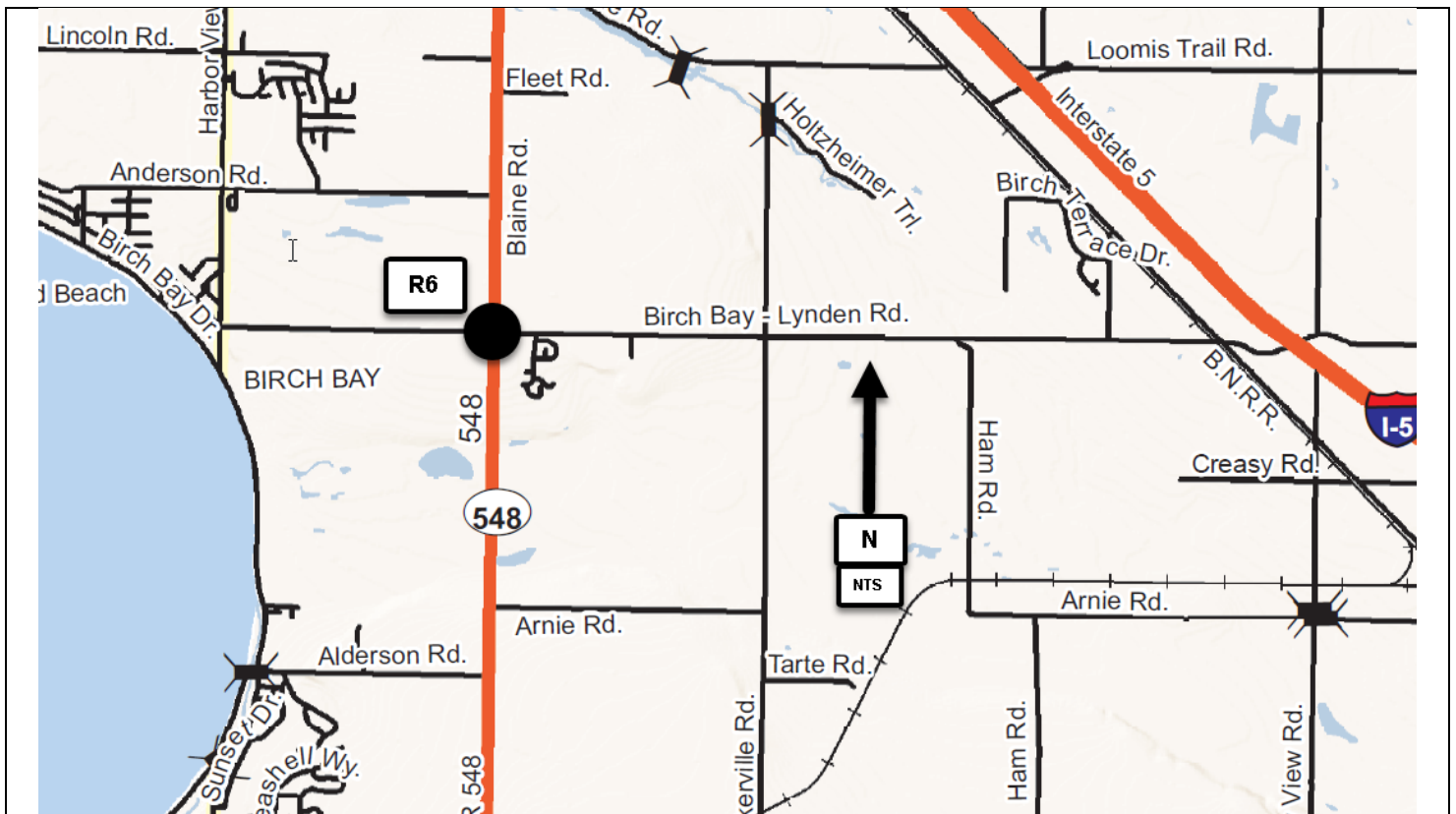
**Funding Sources:**

Federal	\$ STBG available in 2023-2024
State	\$0
Local	\$1,200,000 (add'l Grant funds sought)

**Environmental Permitting** ESA, NEPA, Clrg/CAO, Corp of Engr, DOE,

**Right-of-Way Acquisition (Estimate)** \$500,000

**County Forces (Estimate)**



# Smith Road & Northwest Drive Intersection Improvements CRP # 918019

**Construction Funding Year(s):** TBD

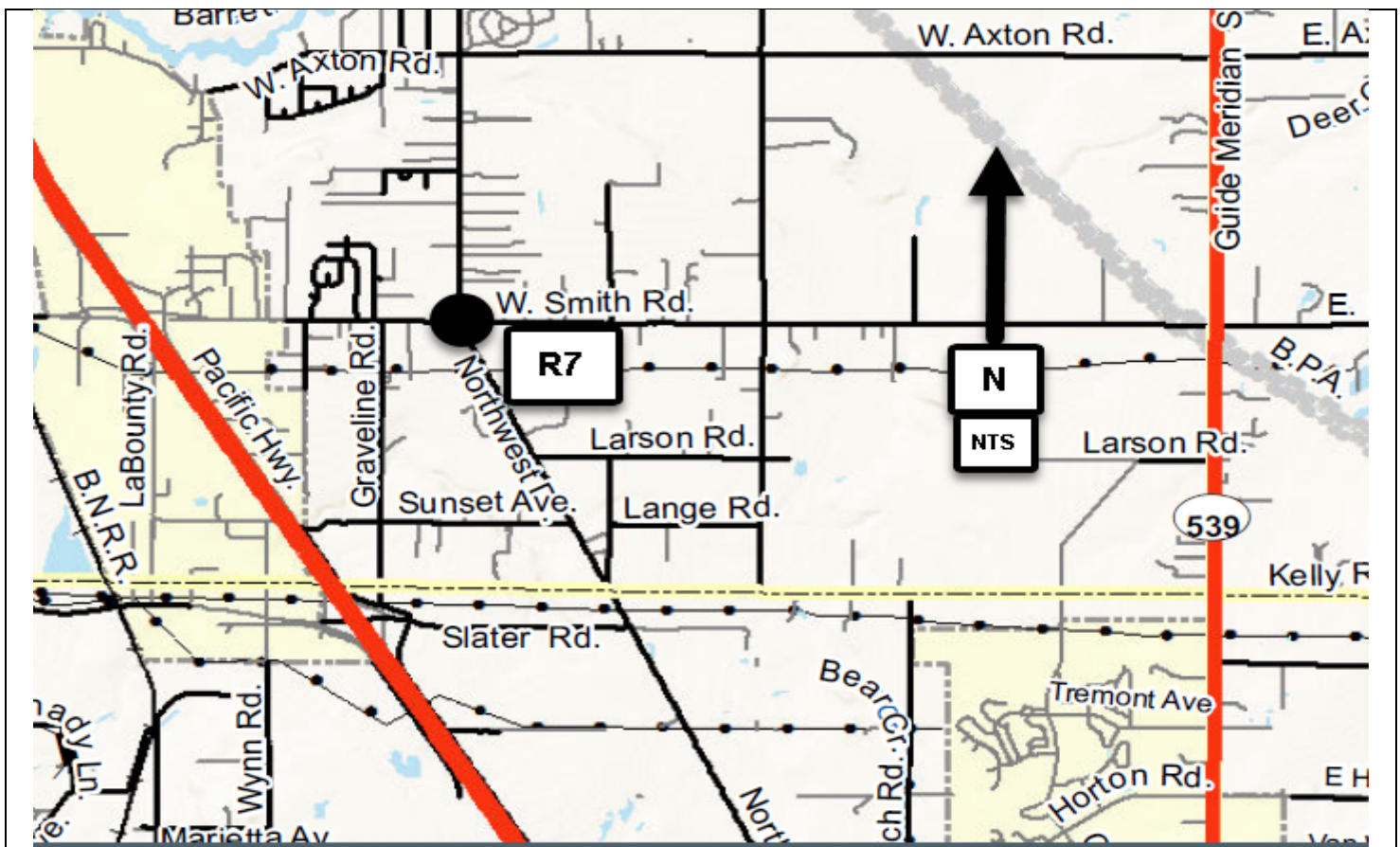
**Project Narrative:**

This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 4-way stop. This project will also require drainage upgrades and R/W acquisition, and is dependent on the NW Annex building being demolished at a future date. This project is listed **#R7** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Consultant contract underway to evaluate & decide on preferred design alternative, and will be determined in late Fall of 2021. Working closely with Facilities on coordination of intersection improvements in conjunction with NW Annex modifications. Public Works is working with Whatcom Council of Governments (WCOG) to submit this project for Regional Transportation Funding with a request for \$5 million.

<b>Total Estimated Project Cost:</b> TBD  <b>Expenditures to Date:</b> \$ 43,000	<b>Funding Sources:</b>	
	Federal	\$ 0
	State	\$ 0
	Local	\$35,000 (Grant funds sought thru WCOG)

<b>Environmental Permitting</b>	SEPA, Critical Areas, DOE
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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.

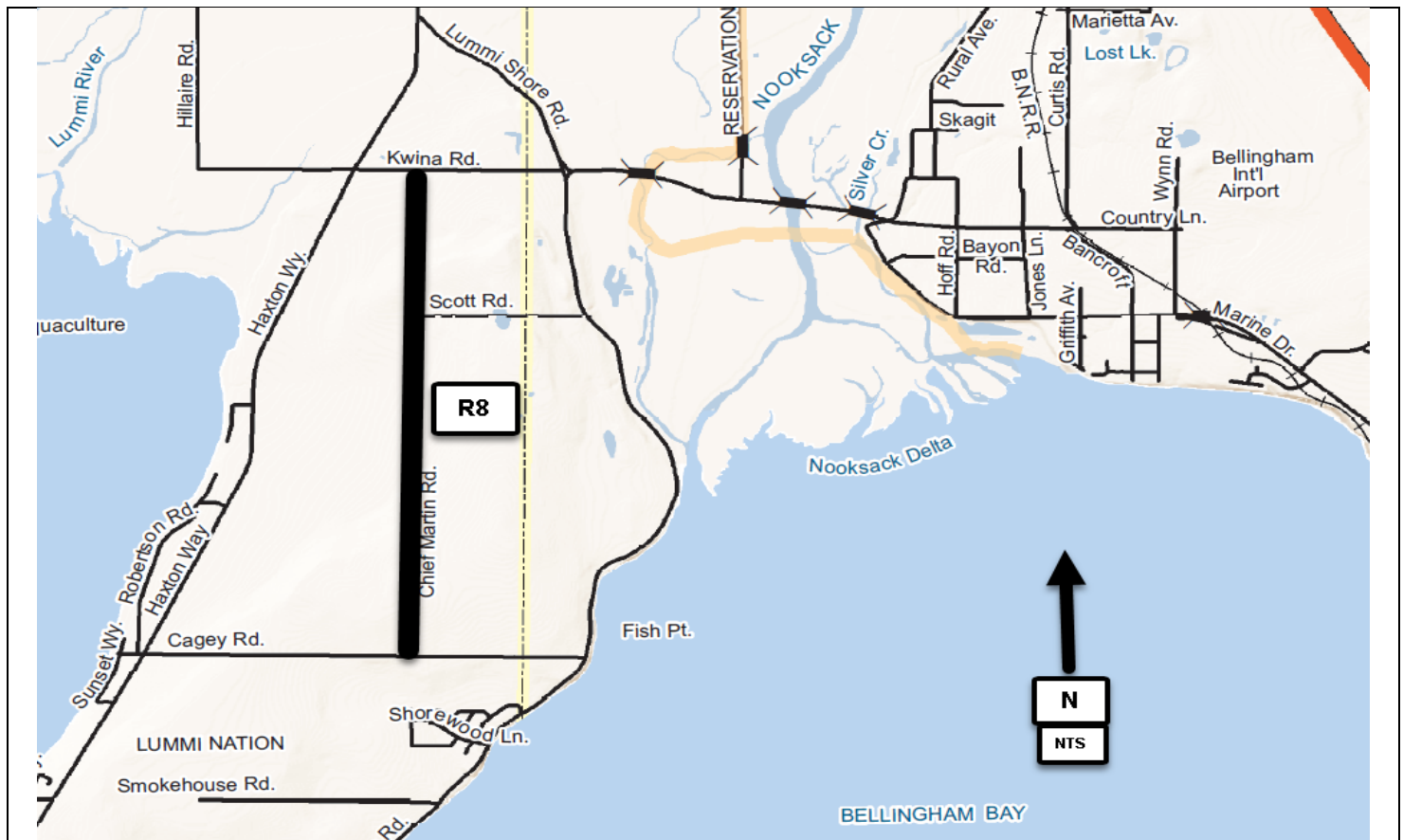
**Total Estimated Project Cost:** \$100,000

**Expenditures to Date:** \$0

**Funding Sources:**

Federal	
State	
Local	\$100,000

<b>Environmental Permitting</b>	SEPA, ESA, HPA, Clrg/CAO
<b>Right-of-Way Acquisition (Estimate)</b>	5,000
<b>County Forces (Estimate)</b>	N/A



## Slater Road & Northwest Drive Intersection Improvements CRP # 918019

**Construction Funding Year(s):** TBD

### Project Narrative:

This project is located in Section 27 & 34 of T39N, R2E. The work involves intersection improvements that will likely be a roundabout or traffic signal at the current 3-way stop. This project will also require fish passage upgrades and R/W acquisition. This project is listed **#R9** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** WSDOT is the lead agency on this project and will be providing the design & construction efforts; however, Public Works staff will coordinate with WSDOT on local agency concerns for the Corridor. Construction start date to be determined (TBD) depending on State progress with permitting and R/W.

<b>Total Estimated Project Cost:</b> TBD	<b>Funding Sources:</b>	
	Federal	\$ 0
	State	\$ 0
	Local	\$15,000
<b>Expenditures to Date:</b> \$ 22,000		

<b>Environmental Permitting</b>	SEPA, Critical Areas, DOE
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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.

<b>Total Estimated Project Cost:</b> \$4,000,000  <b>Expenditures to Date:</b> \$2,000,000	<b>Funding Sources:</b>	
	Federal	\$0
	State	\$0
	Local	\$2,000,000

<b>Environmental Permitting</b>	N/A
<b>Right-of-Way Acquisition (Estimate)</b>	N/A
<b>County Forces (Estimate)</b>	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

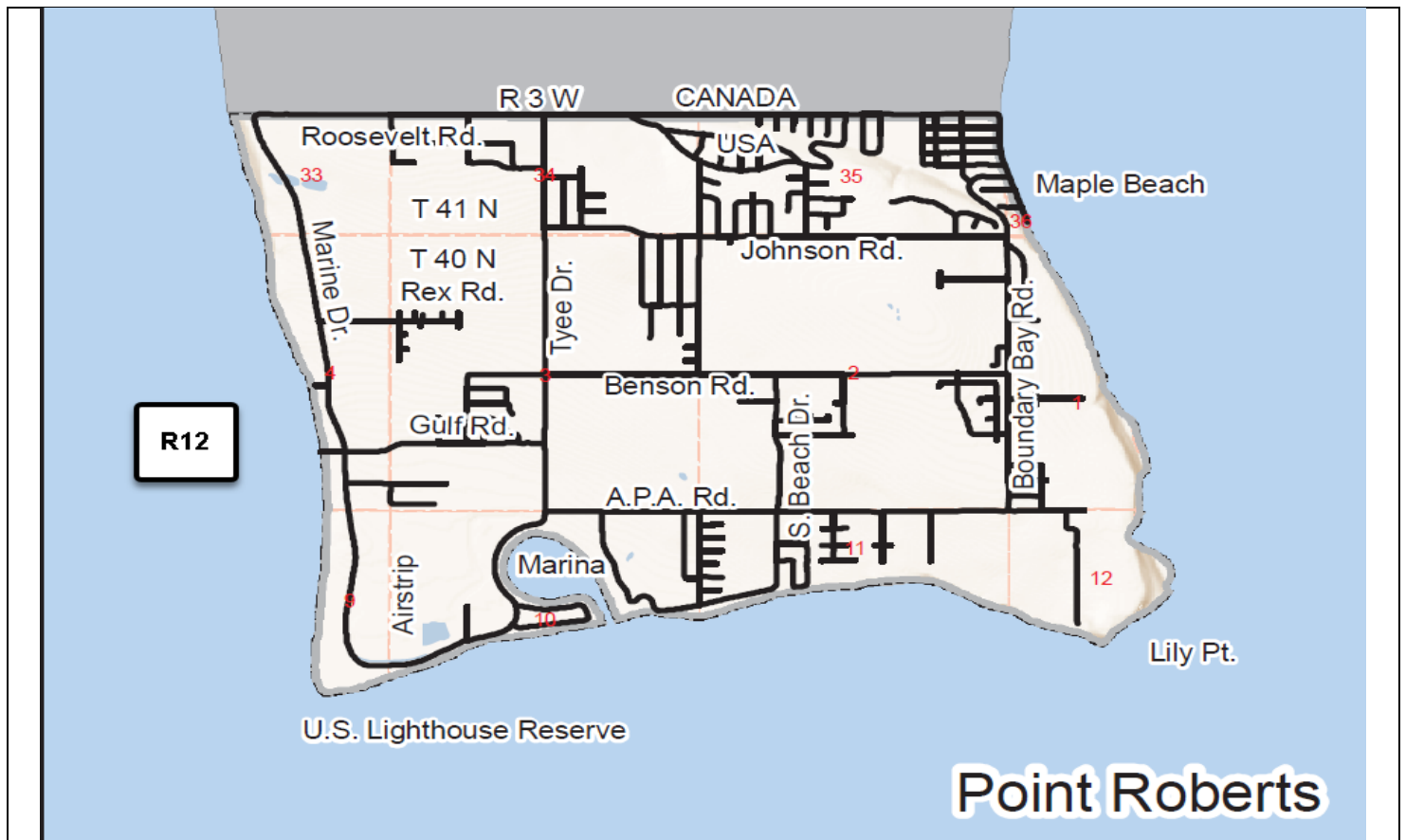
**Funding Sources:**

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.

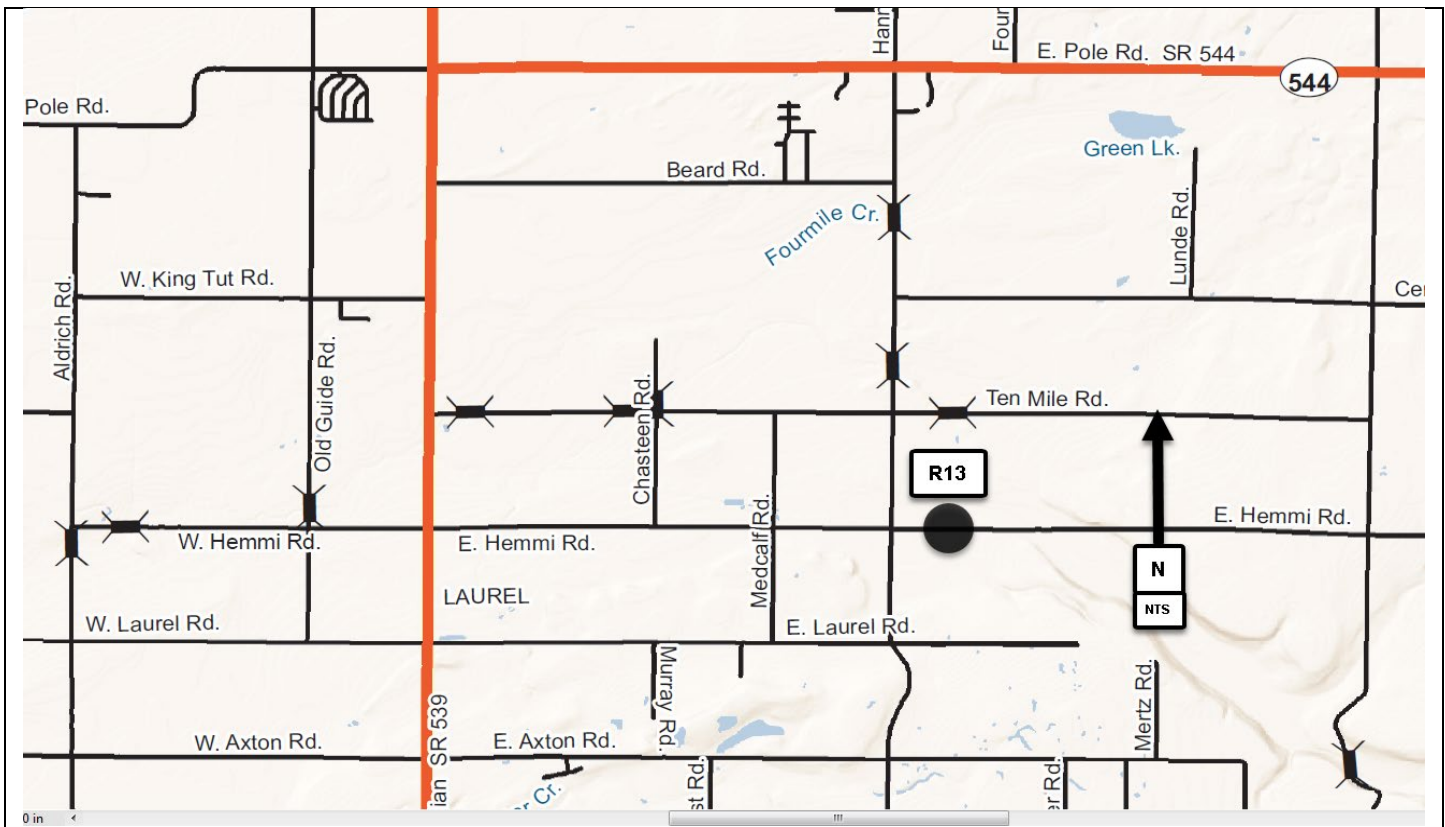
**Total Estimated Project Cost:** \$1,745,000

**Expenditures to Date:** \$295,000

### Funding Sources:

Federal	
State	
Local	\$1,745,000

<b>Environmental Permitting</b>	SEPA, HPA, Shorelines, ACOE 404
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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

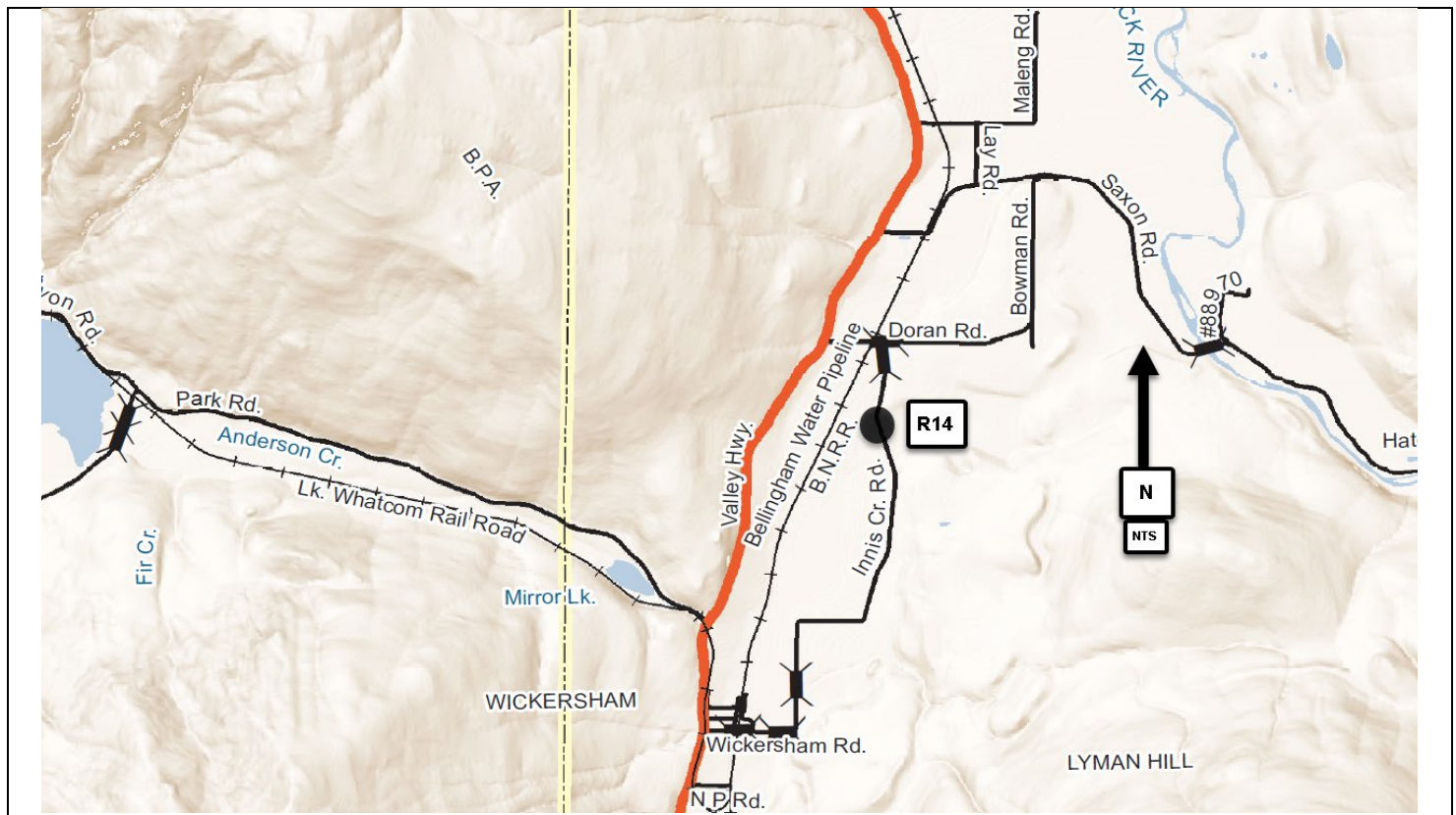
### Funding Sources:

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

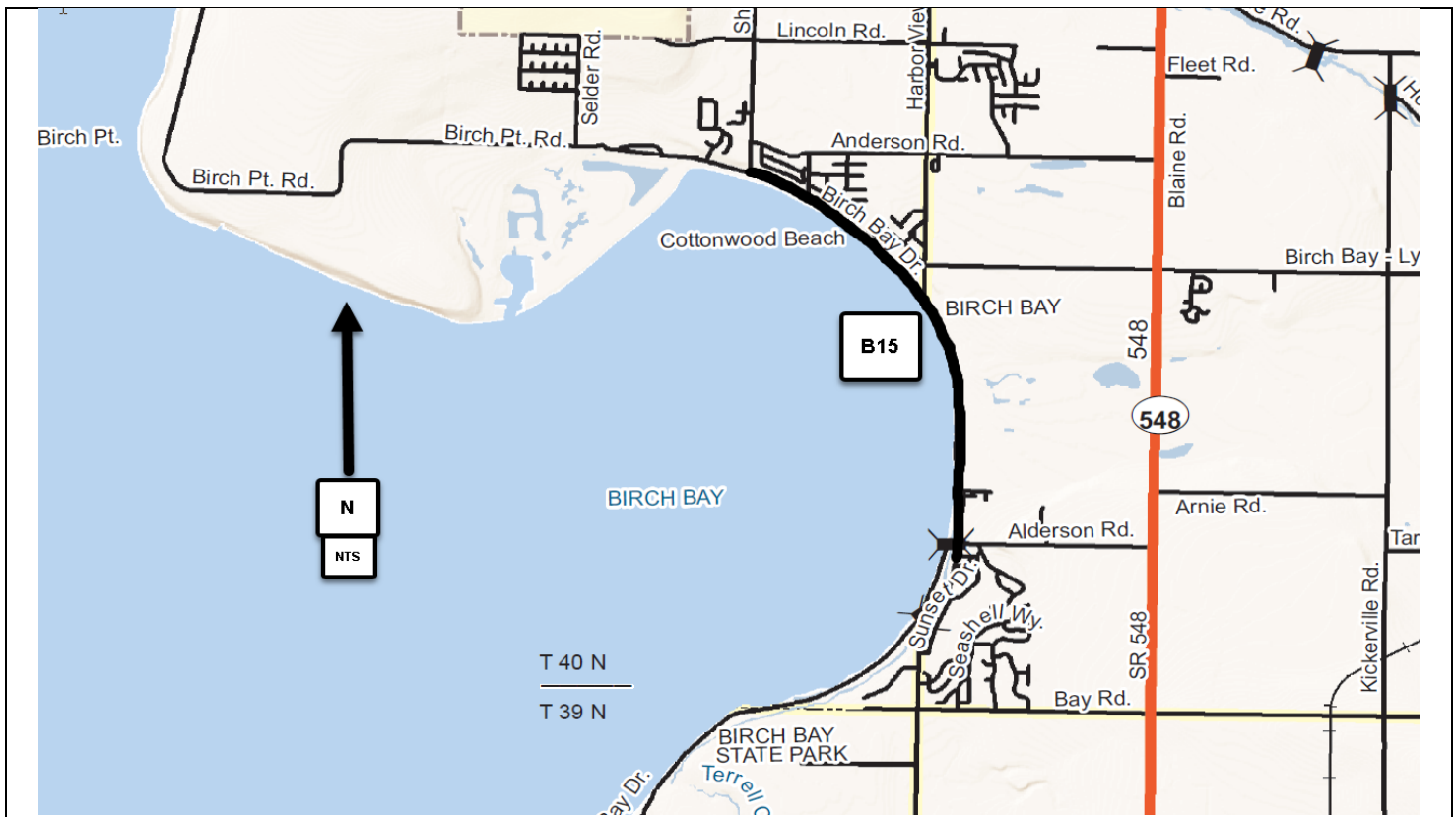
### Funding Sources:

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

<b>Environmental Permitting</b>	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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

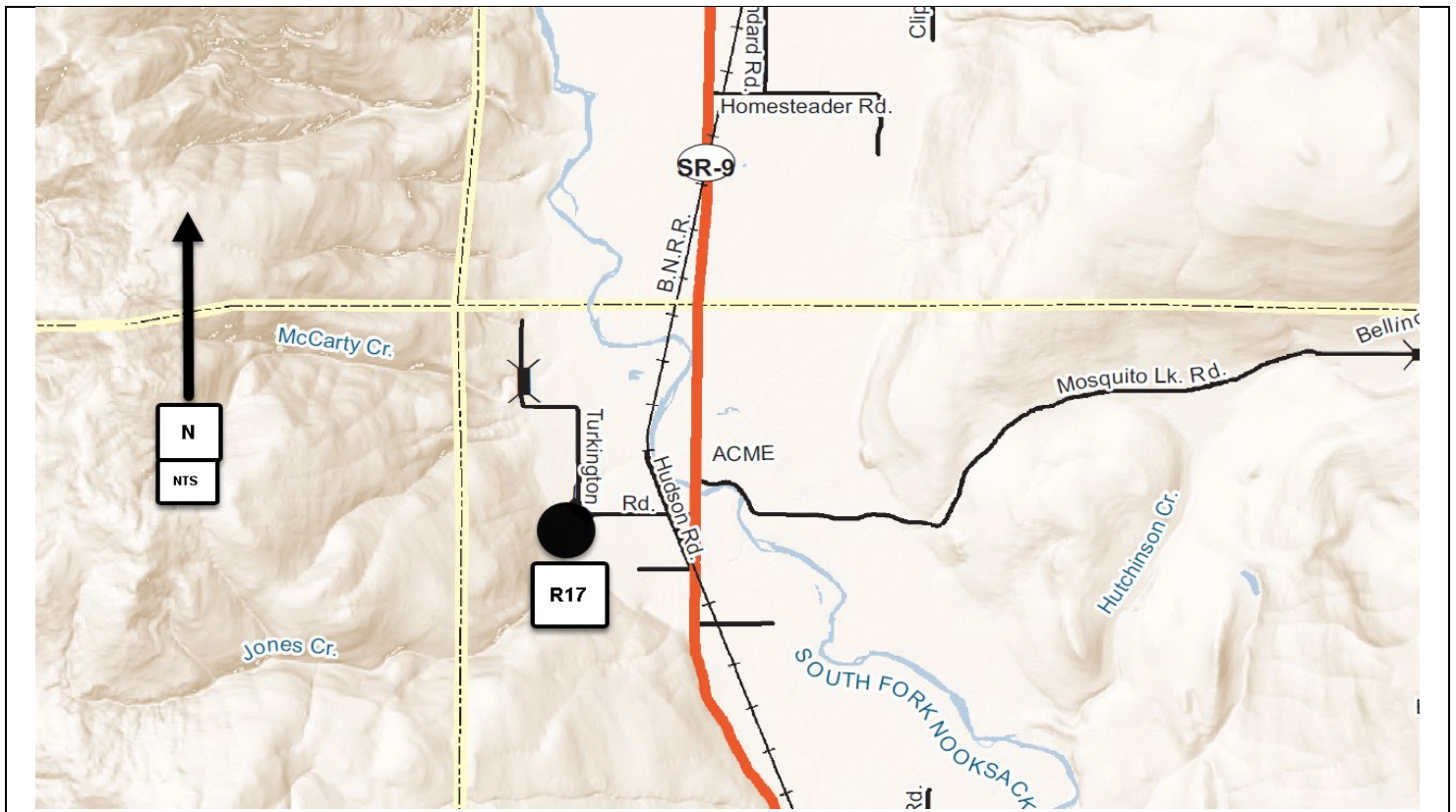
### Funding Sources:

Federal	\$0
State	\$0
Local	<b>\$585,000 (2021-2022)</b>

<b>Environmental Permitting</b>	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
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<b>Right-of-Way Acquisition (Estimate)</b>	\$50,000
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<b>County Forces (Estimate)</b>	N/A
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## 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.

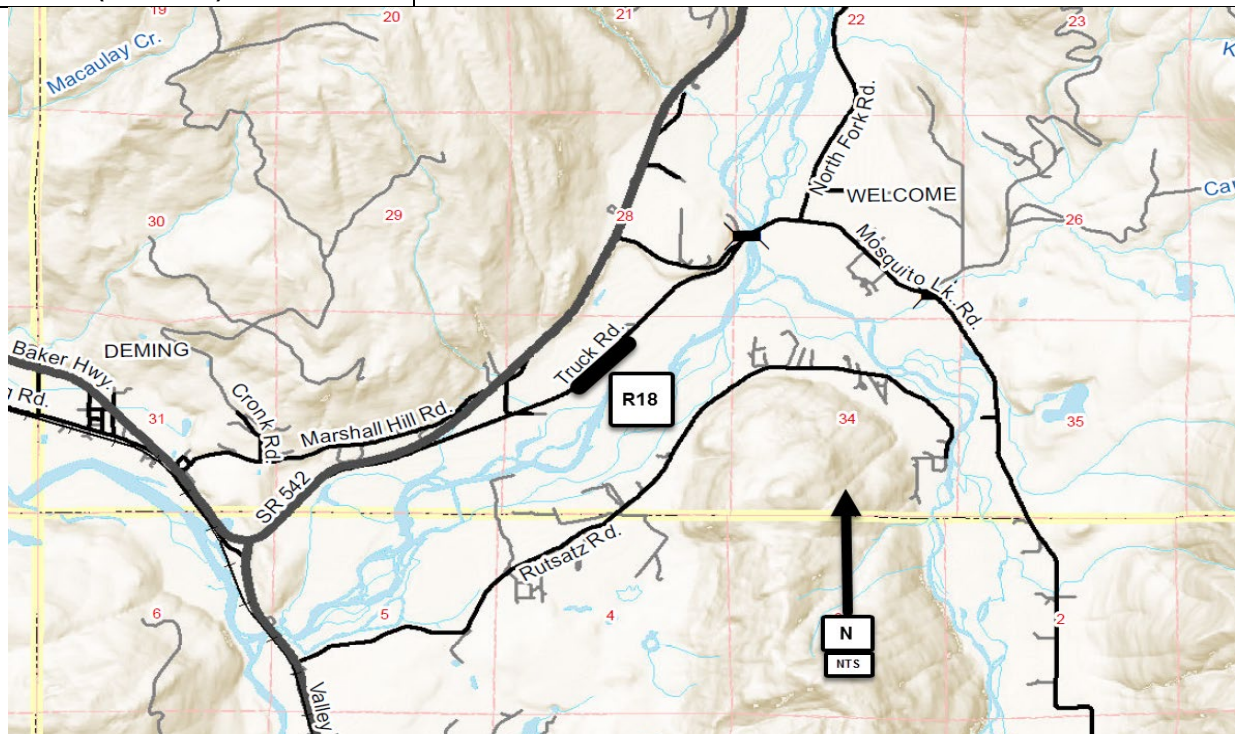
**Total Estimated Project Cost:** \$ 400,000

**Expenditures to Date:** \$0

**Funding Sources:**

Federal FEMA	<b>\$300,000</b>
State	<b>\$0</b>
Local	<b>\$100,000</b>

<b>Environmental Permitting</b>	BA, HPA, SEPA, Corps of Engrs, CLR/CAO, Shorelines, DNR
<b>Right-of-Way Acquisition (Estimate)</b>	\$50,000
<b>County Forces (Estimate)</b>	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

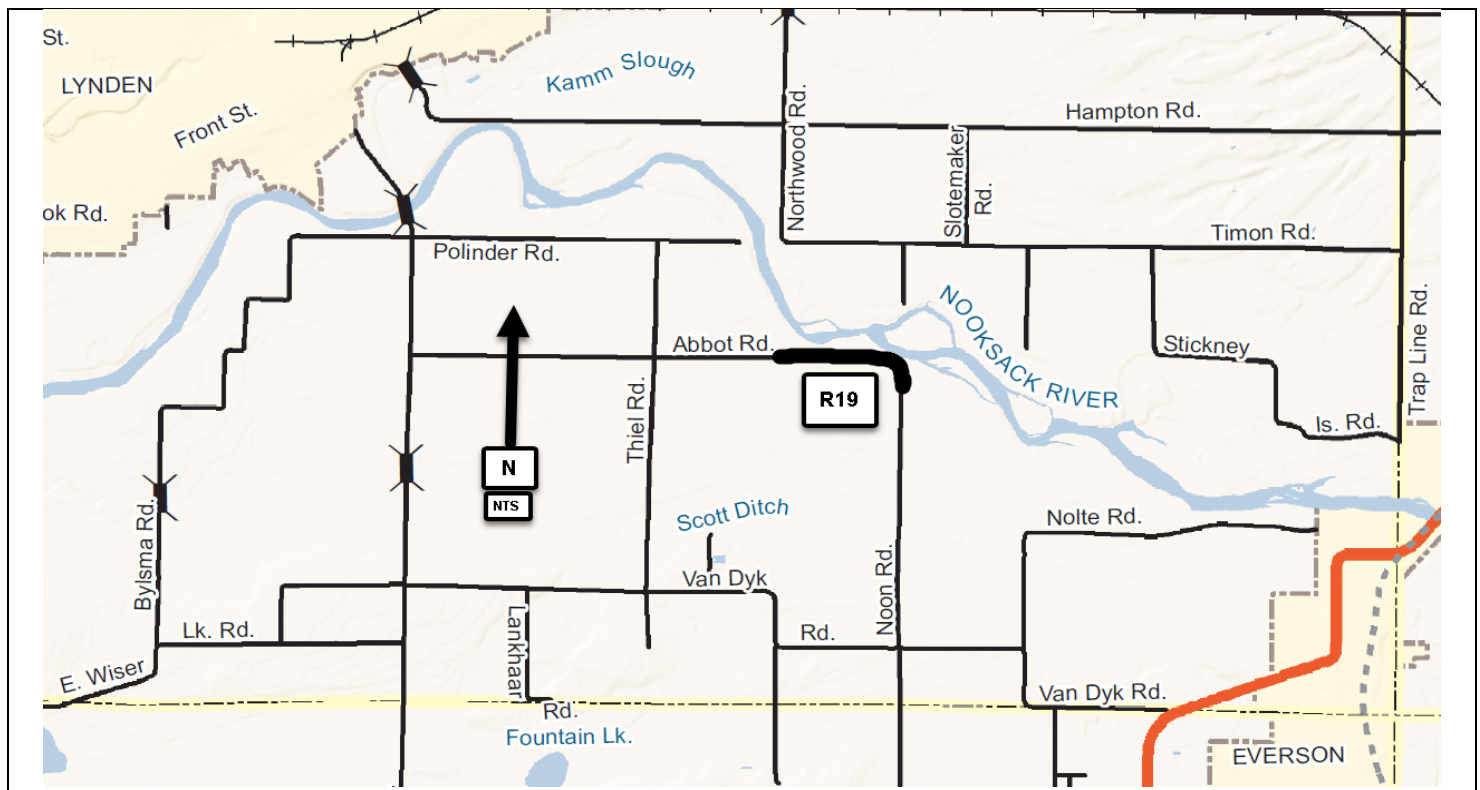
**Funding Sources:**

Federal	\$
State	\$
Local	\$400,000 (2021-2022)

<b>Environmental Permitting</b>	HPA, ACOE, Shorelines, SEPA
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<b>Right-of-Way Acquisition (Estimate)</b>	TBD
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<b>County Forces (Estimate)</b>	TBD
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## Ferndale Road/Levee Improvements CRP # 919001

**Construction Funding Year(s):** TBD

**Project Narrative:**

This project is located in Sections 30 and 31, T39N, R2E. This project includes reconstruction of 1.2 miles of levee including the Ferndale Levee and Ferndale Treatment Plant Levee segments. The new levee will be set back slightly to Ferndale Road with the roadway serving as the crest of the levee. This project is listed **#R20** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Due to the high cost, outside funding will be sought. The WCFCZD will pursue funding through the Floodplains by Design grant program administered by the DOE. The 6-Yr TIP will only show the road fund support for the design effort.

**Total Estimated Project Cost:** \$150,000

**Expenditures to Date:** \$0

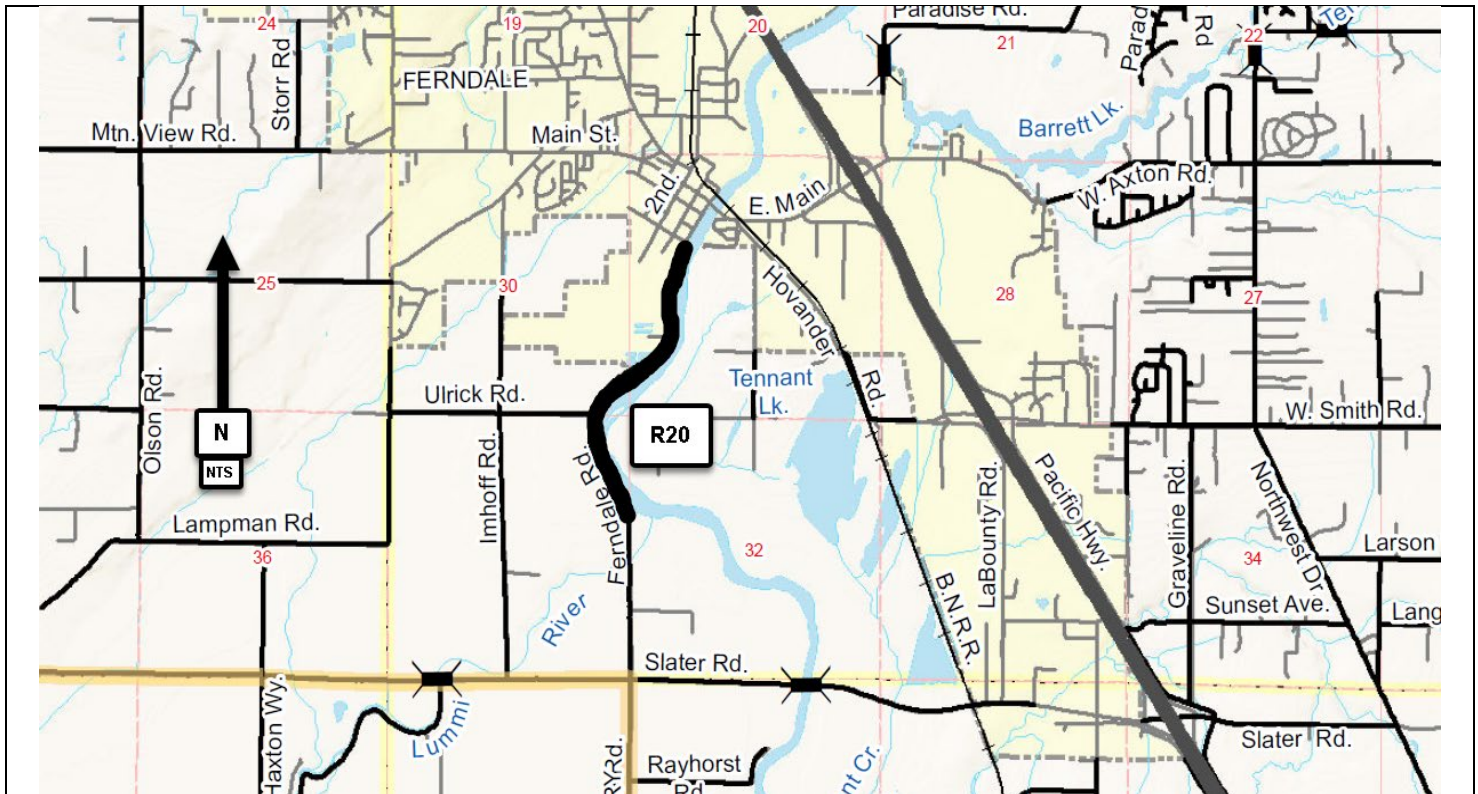
**Funding Sources:**

Federal	\$
State	\$
Local	\$150,000 (2022-2023)

**Environmental Permitting** TBD

**Right-of-Way Acquisition (Estimate)** TBD

**County Forces (Estimate)** TBD



# Lake Louise Rd., Austin Street to Lake Whatcom Blvd. Pavement Rehabilitation CRP #921004

**Construction Funding Year(s):** 2023

**Project Narrative:**

The Lake Louise Rd. , Austin St. to Lake Whatcom Blvd. project is located in Sections 35 and 36 of Township 38N , Range 3E and Sections 1, 6, 7, and 8 of Township 37N, Range 4E. The work will involve the pavement rehabilitation of approximately 4.06 miles of roadway and culvert replacements for fish passage. This project is listed **#R21** on the 2022-2027 Six-Year Transportation Improvement Program.

**Project Status:** Design work will begin in 2022, with construction planned for summer of 2023.

**Total Estimated Project Cost:** \$2,050,000

**Expenditures to Date:** \$ 0

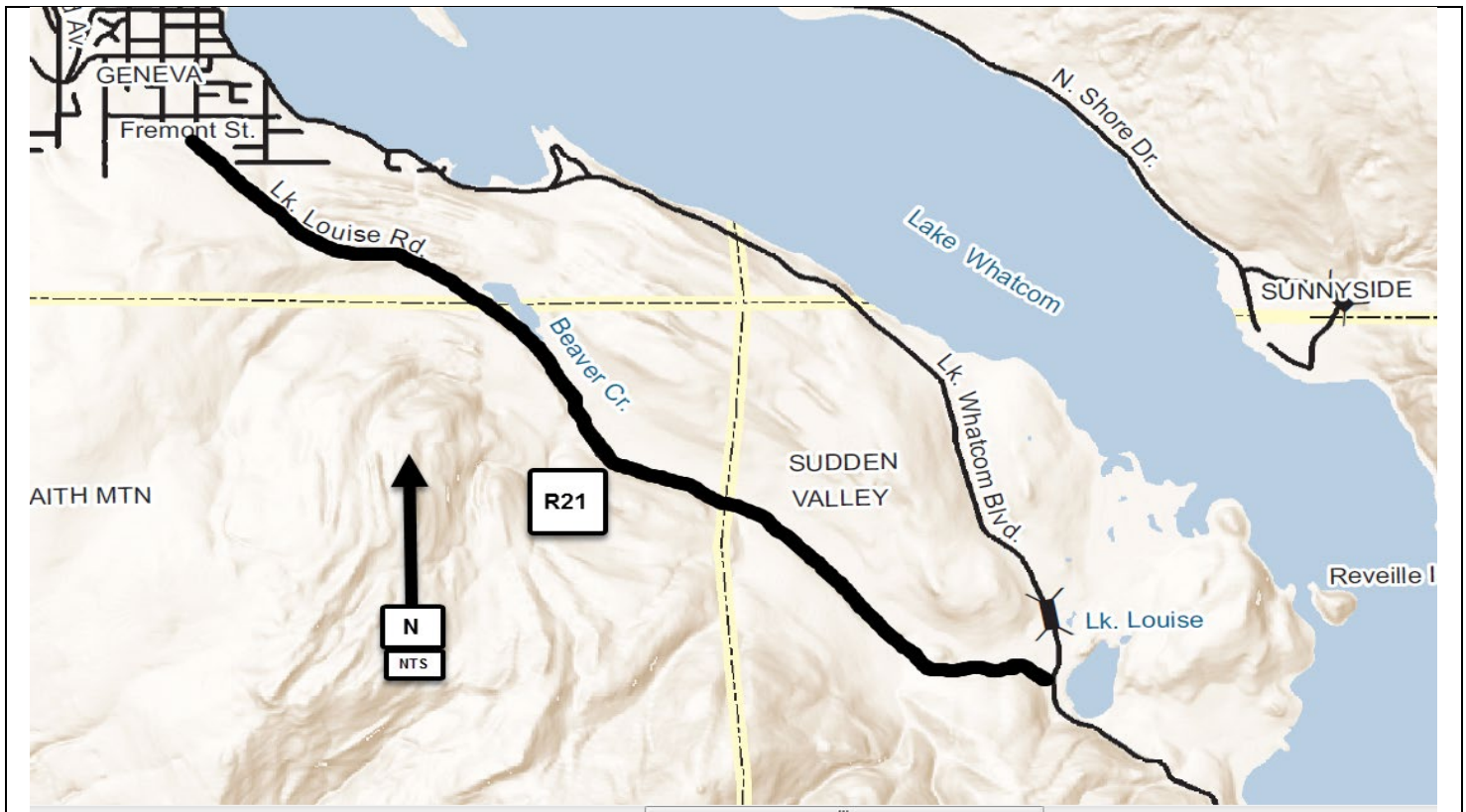
**Funding Sources:**

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

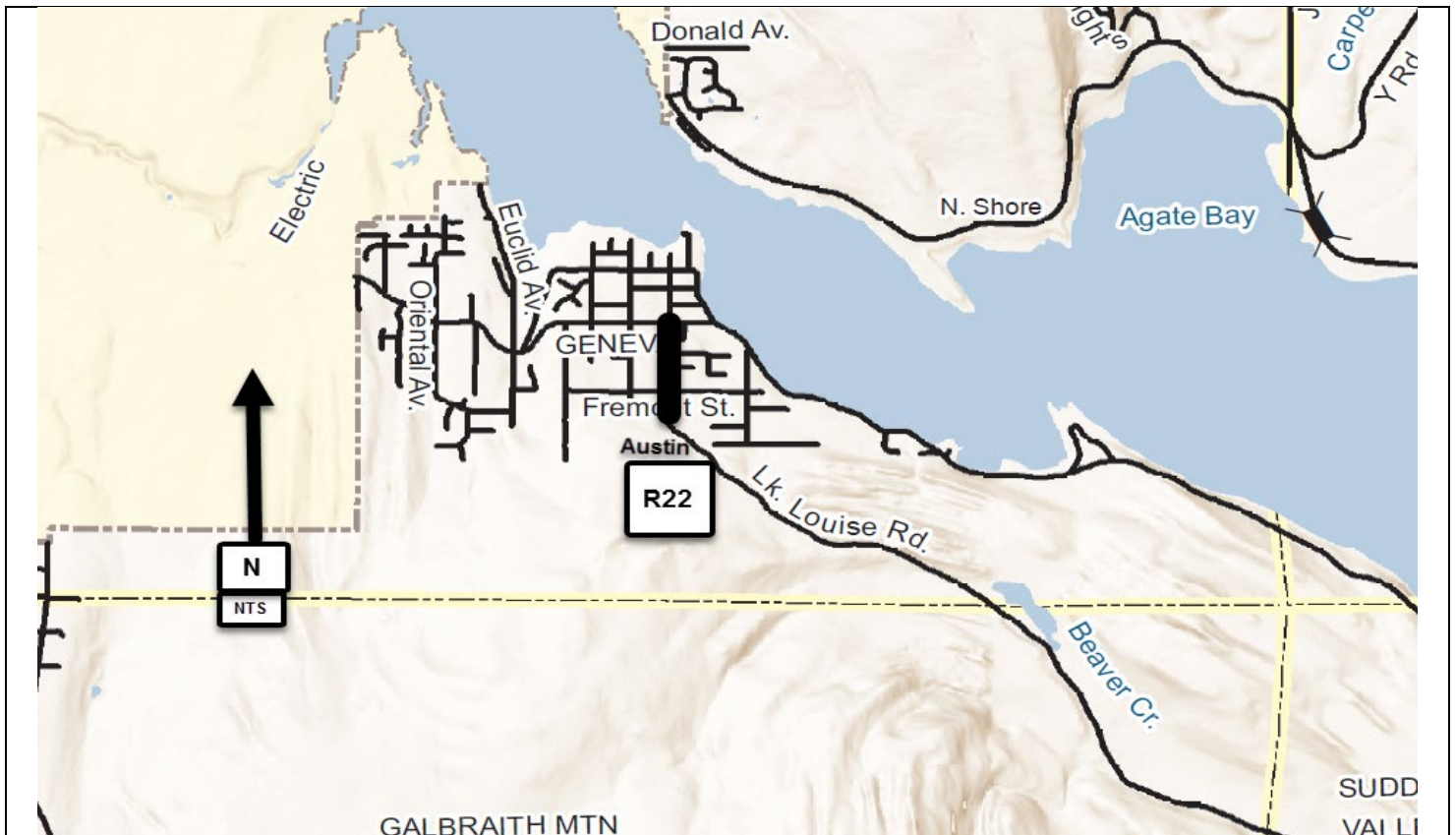
**Funding Sources:**

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

## 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

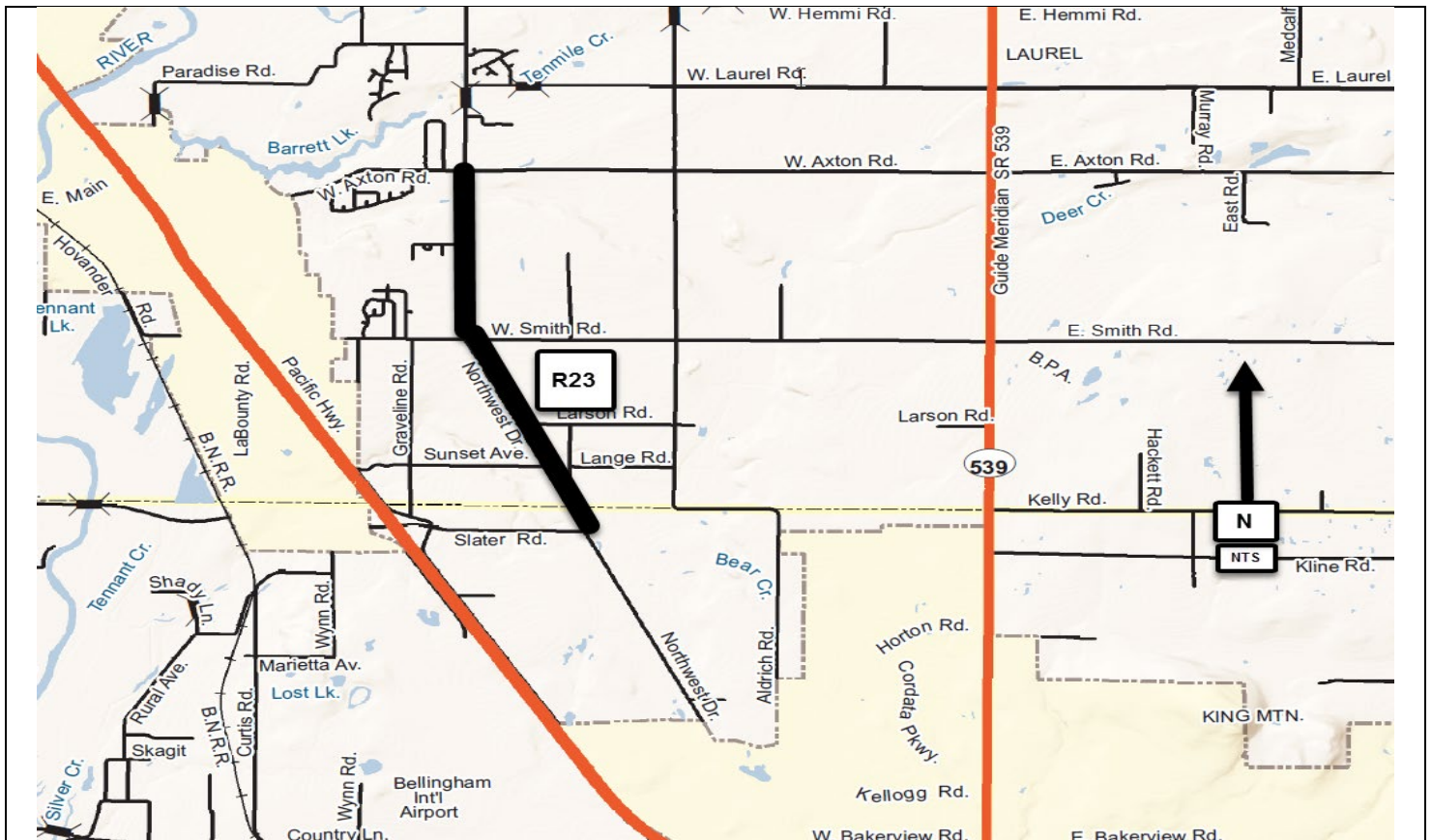
## Funding Sources:

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)

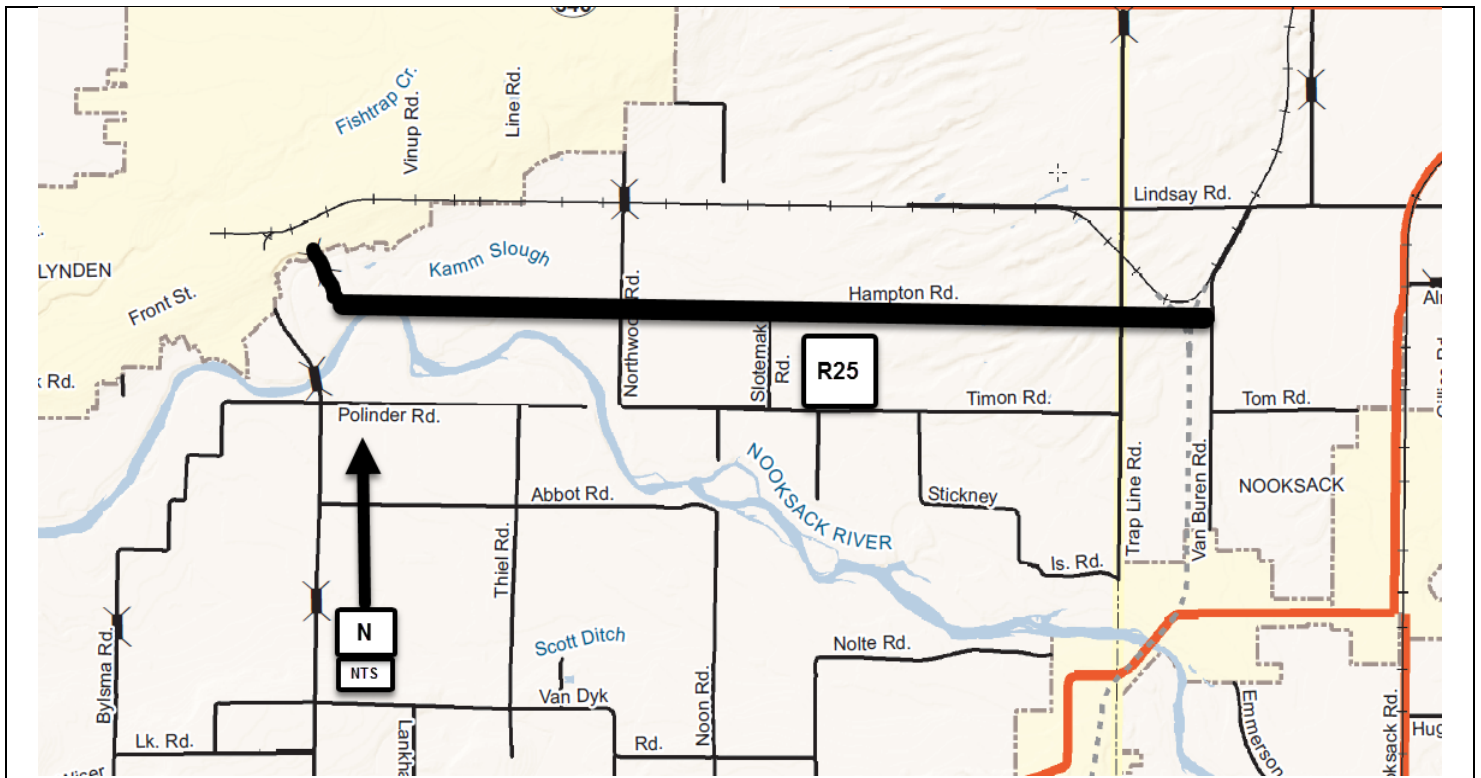
State \$ 170,000

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

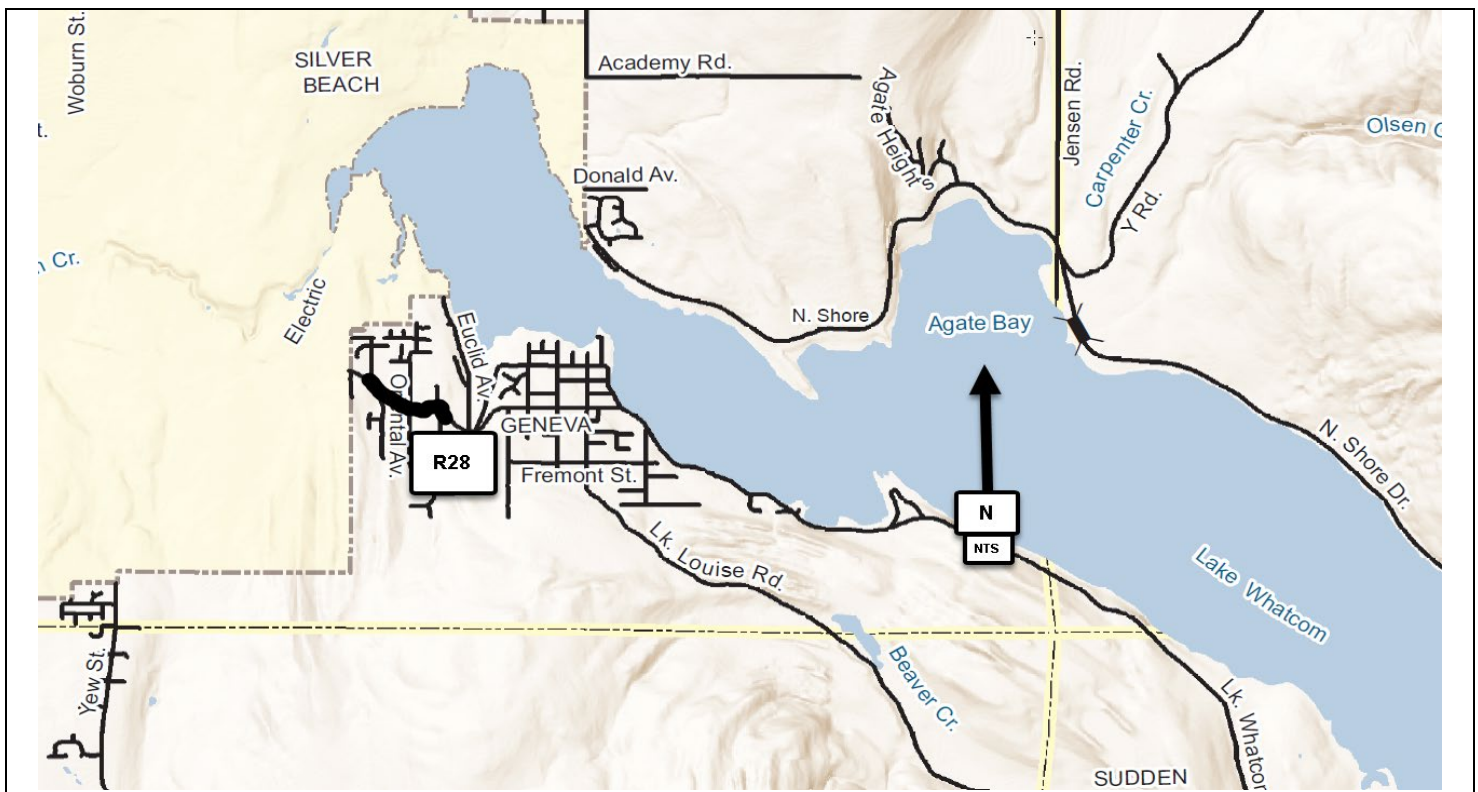
**Funding Sources:**

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

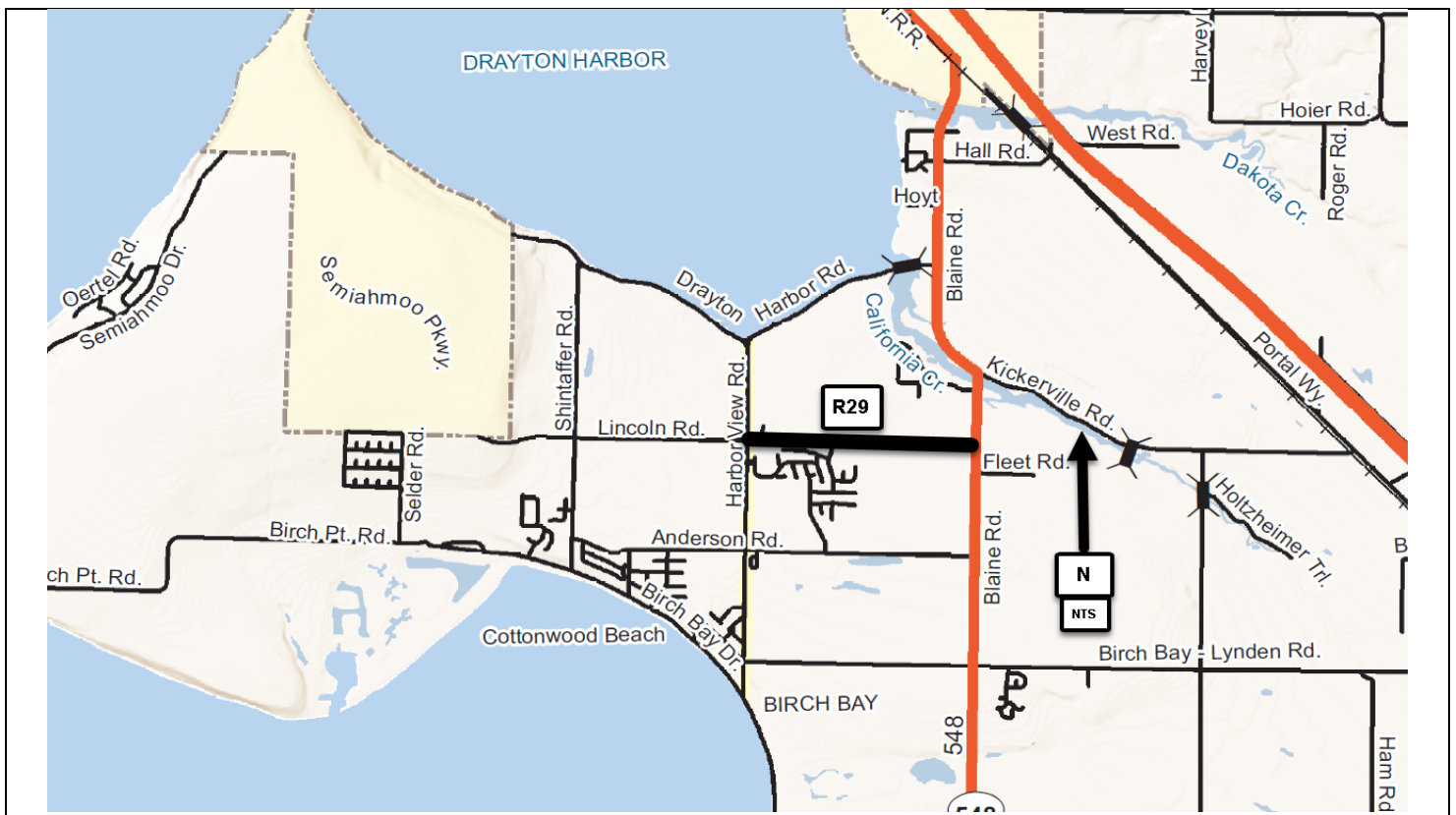
## Funding Sources:

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.

<b>Total Estimated Project Cost:</b> \$350,000  <b>Expenditures to Date:</b> \$ 0	<b>Funding Sources:</b>	
	Federal	\$ 0
	State	\$ 0
	Local	\$350,000

<b>Environmental Permitting</b>	
<b>Right-of-Way Acquisition (Estimate)</b>	
<b>County Forces (Estimate)</b>	

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

**Expenditures to Date:** \$ 0

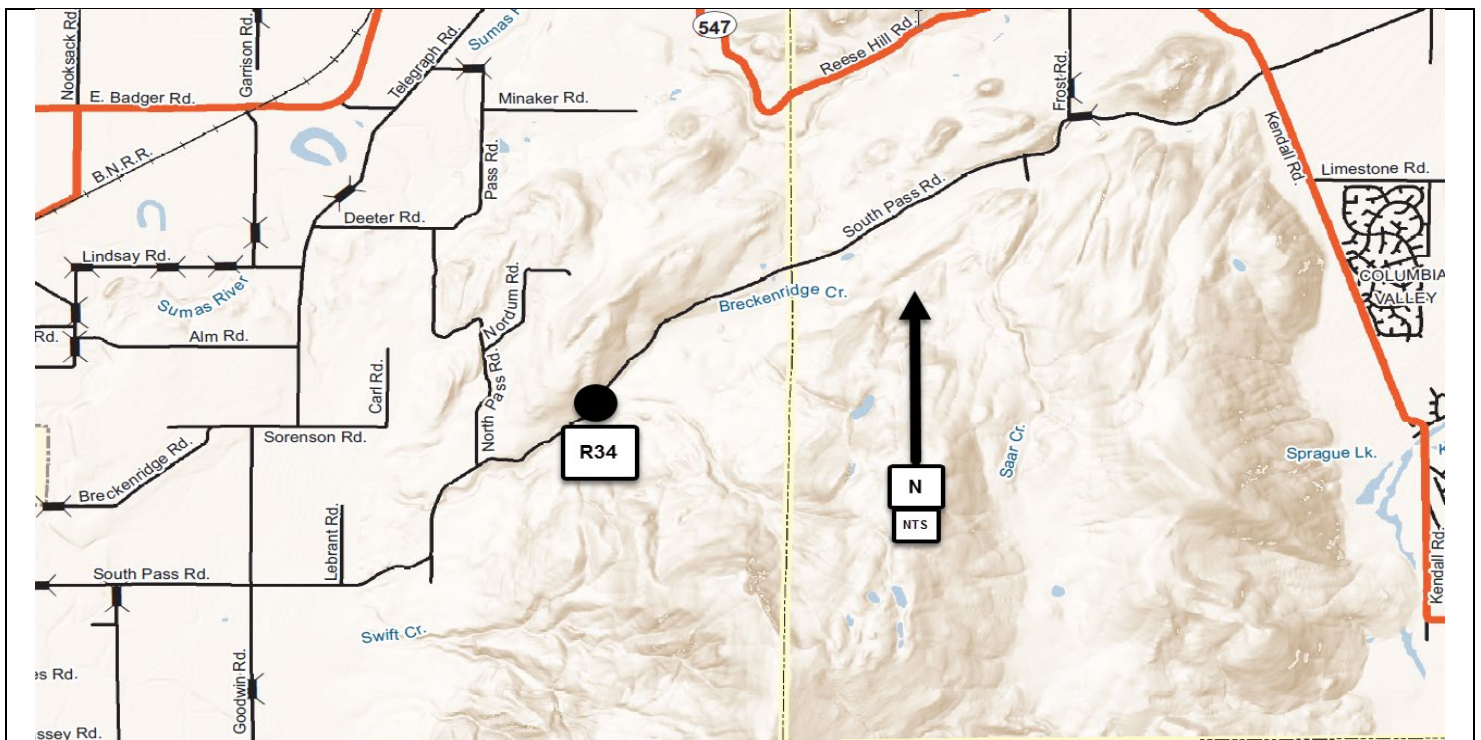
### Funding Sources:

Federal	\$380,000
State	\$ 0
Local	\$75,000

**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:** \$

<b>Funding Sources:</b>	
Federal	\$ 0
State	\$ 0
Local	\$ 360,000

<b>Environmental Permitting</b>	
<b>Right-of-Way Acquisition (Actual)</b>	\$
<b>County Forces (Estimate)</b>	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

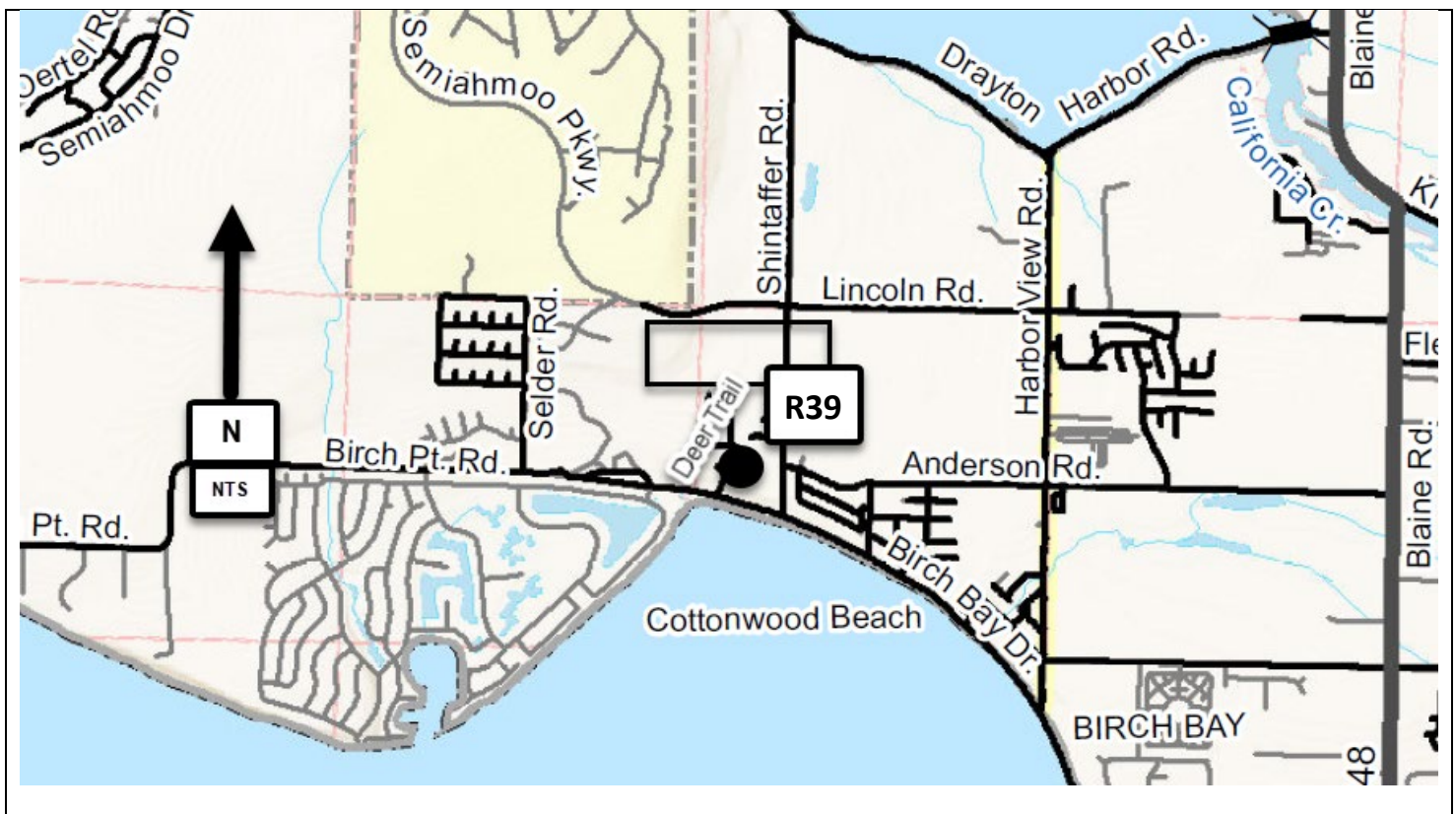
**Project Narrative:**

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.

<b>Total Estimated Project Cost:</b> \$130,000  <b>Expenditures to Date:</b> \$ 0	<b>Funding Sources:</b>	Local
	Federal	\$ 0
	State	\$ 0
	Local	\$130,000

<b>Environmental Permitting</b>	SEPA
<b>Right-of-Way Acquisition (Estimate)</b>	\$10,000
<b>County Forces (Estimate)</b>	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

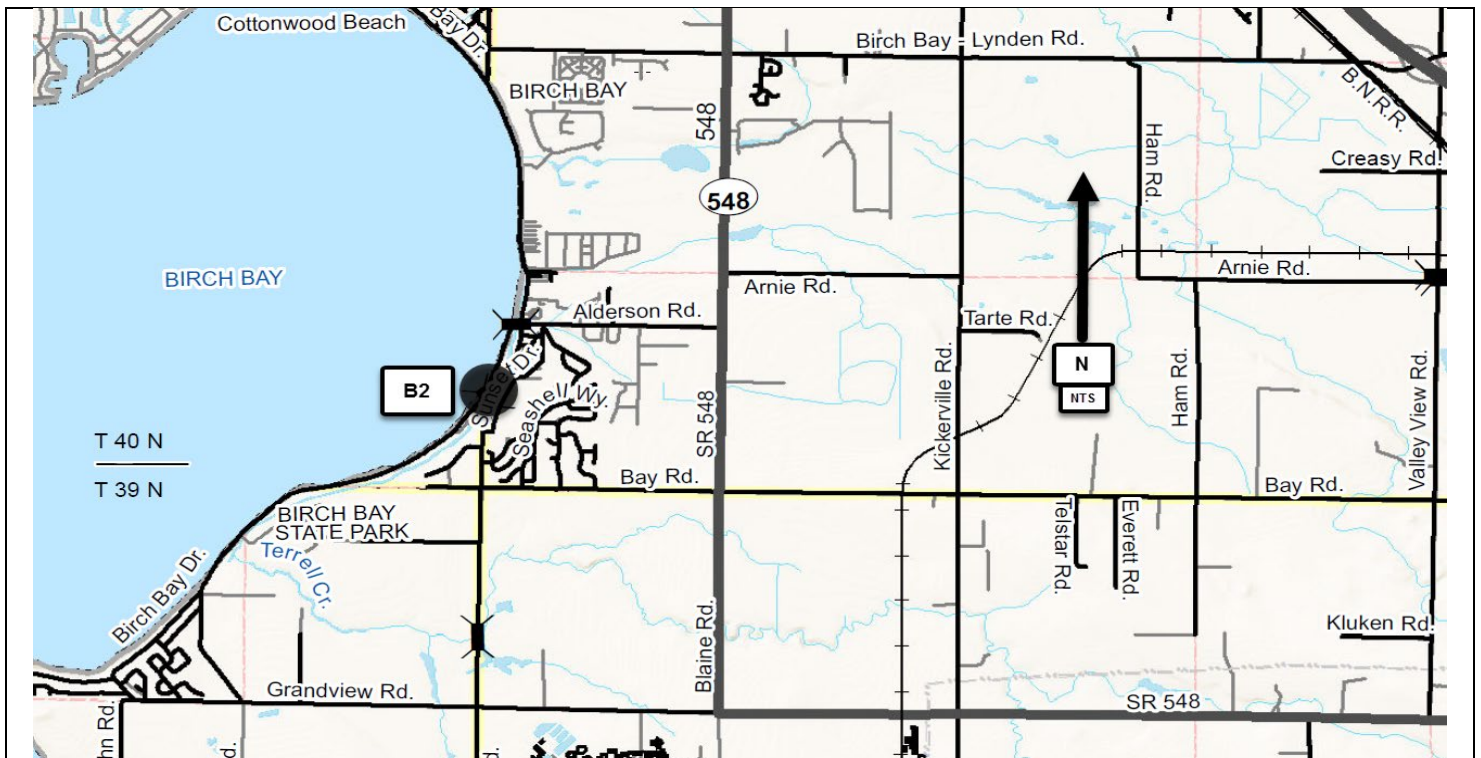
**Funding Sources:**

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

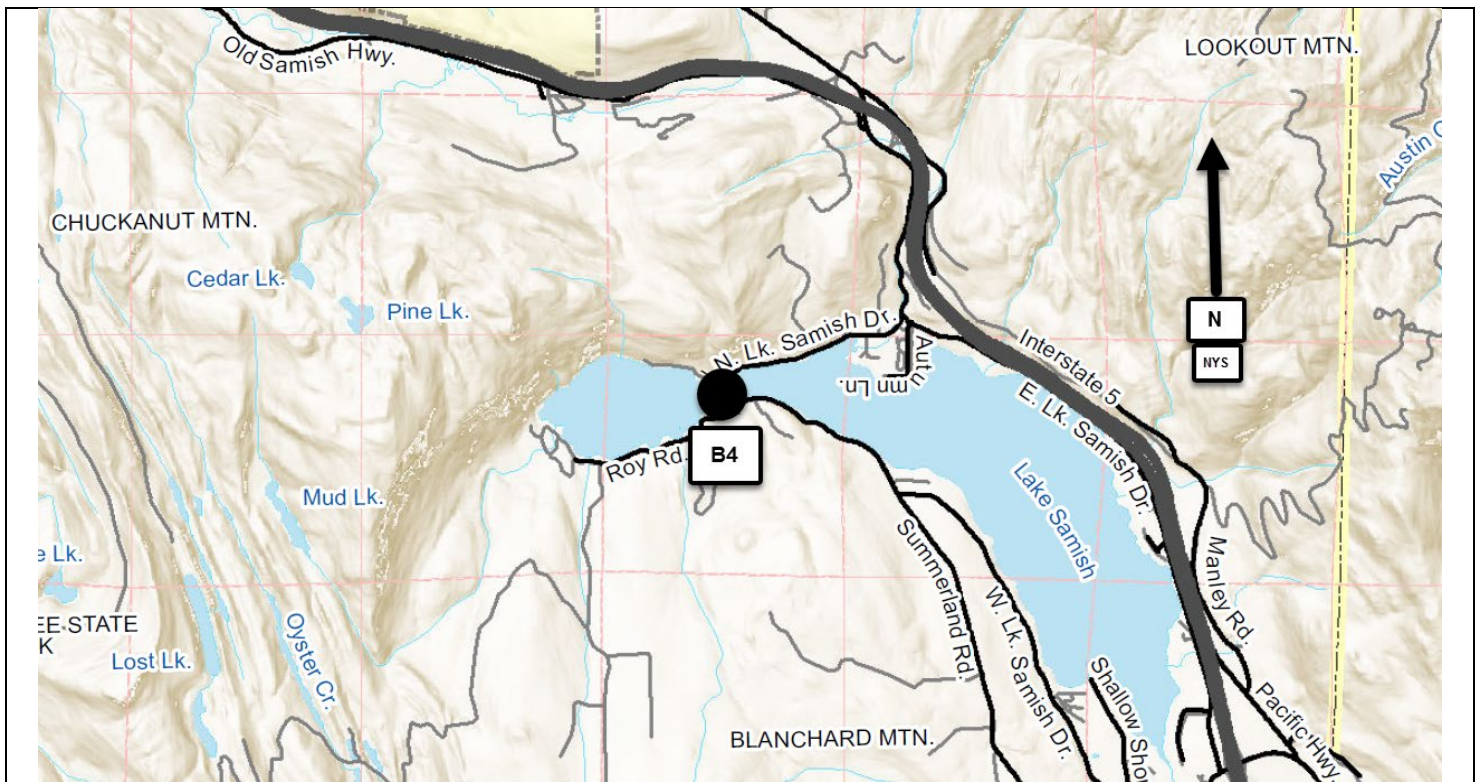
**Funding Sources:**

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.

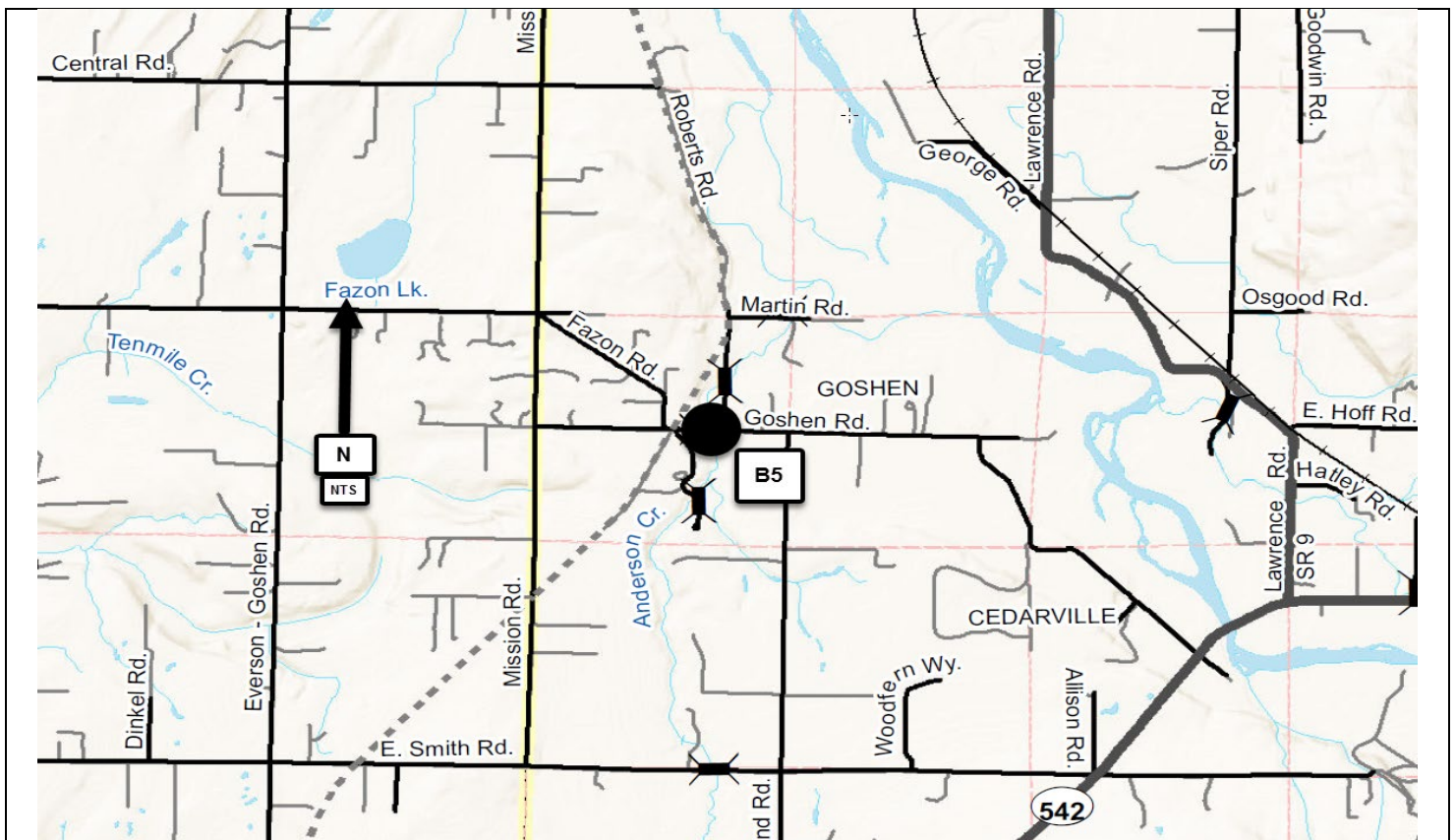
**Total Estimated Project Cost:** \$ 4,200,000

**Expenditures to Date:** \$ 300,000

**Funding Sources:**

Federal	\$4,000,000
State	\$0
Local	\$200,000

<b>Environmental Permitting</b>	HPA, NEPA, ACOE, DOE, WC Shorelines
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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

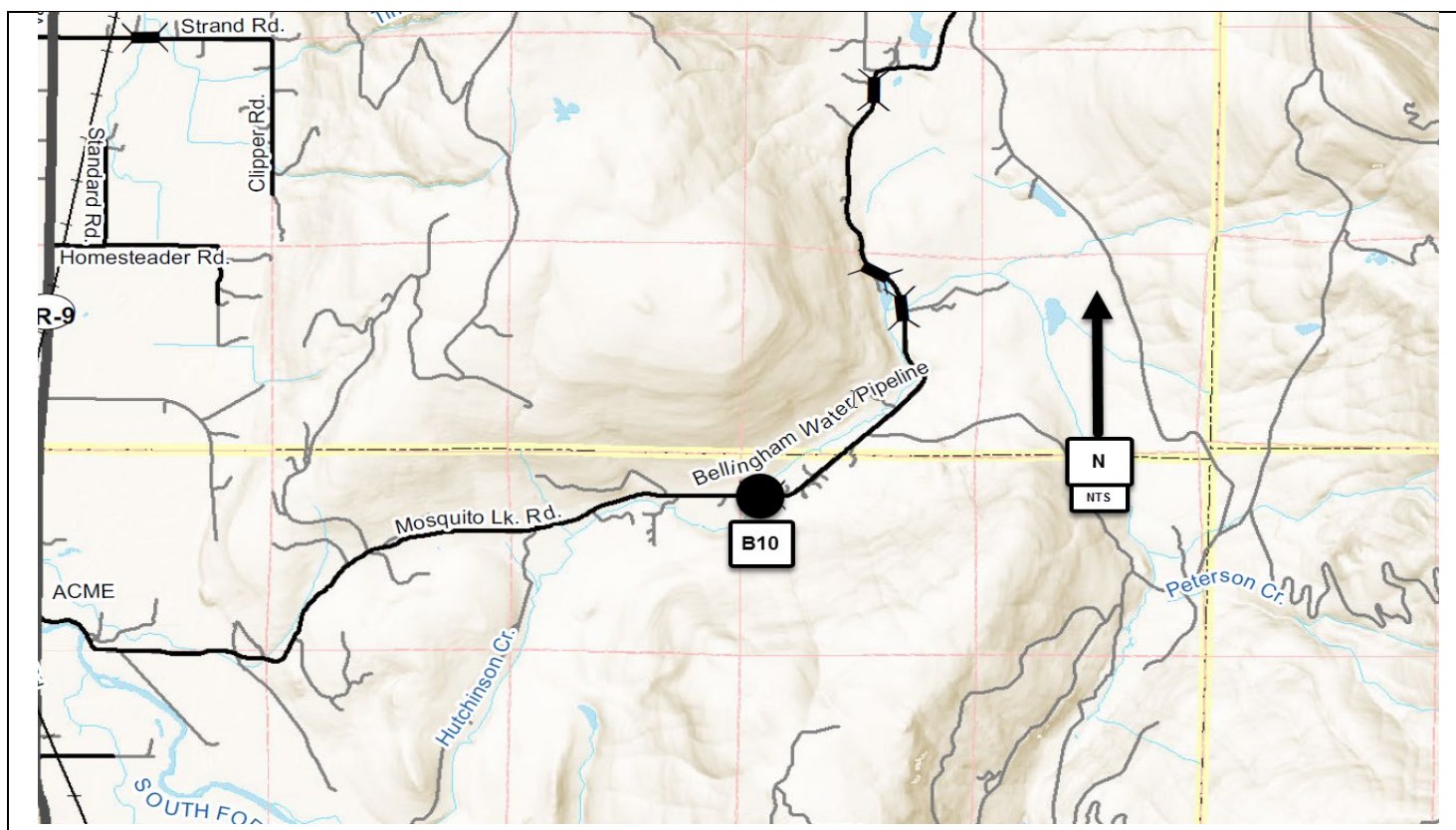
## Funding Sources:

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

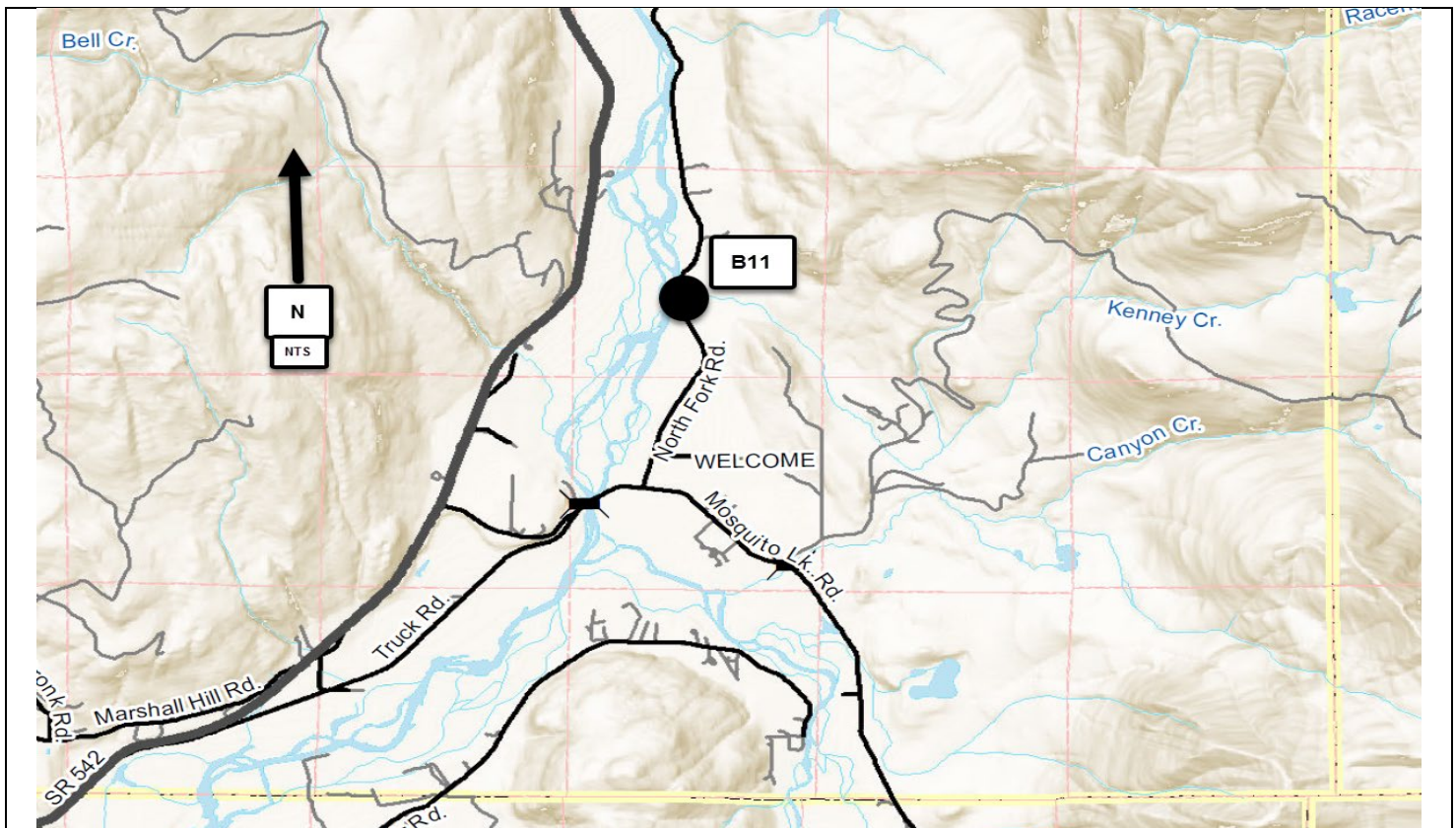
**Construction Funding Year(s):** 2023

**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.

<b>Total Estimated Project Cost:</b> \$4,023,000  <b>Expenditures to Date:</b> \$ 400,000	<b>Funding Sources:</b>	
	Federal	\$0
	State	\$ 3,418,000 (FBRB funds)
	Local	\$ 605,000

<b>Environmental Permitting</b>	SEPA, HPA, ACOE, WC Shorelines, DOE
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	N/A



## Deal Road Fish Passage Culverts CRP #921008

**Construction Funding Year(s):** TBD

**Project Narrative:** This project is located in Sections 33, T39N, R5E. This project is listed **#B12** on the 2022-2027 Six-Year Transportation Improvement Program. Project includes replacing two existing culverts that have been identified as barriers to fish passage in the Deal Road area with culverts that meet current fish passage requirements.

**Project Status:** Preliminary design and permitting to begin in late 2021 and continue through 2022.

**Total Estimated Project Cost:** \$ TBD

**Expenditures to Date:** \$ 10,000

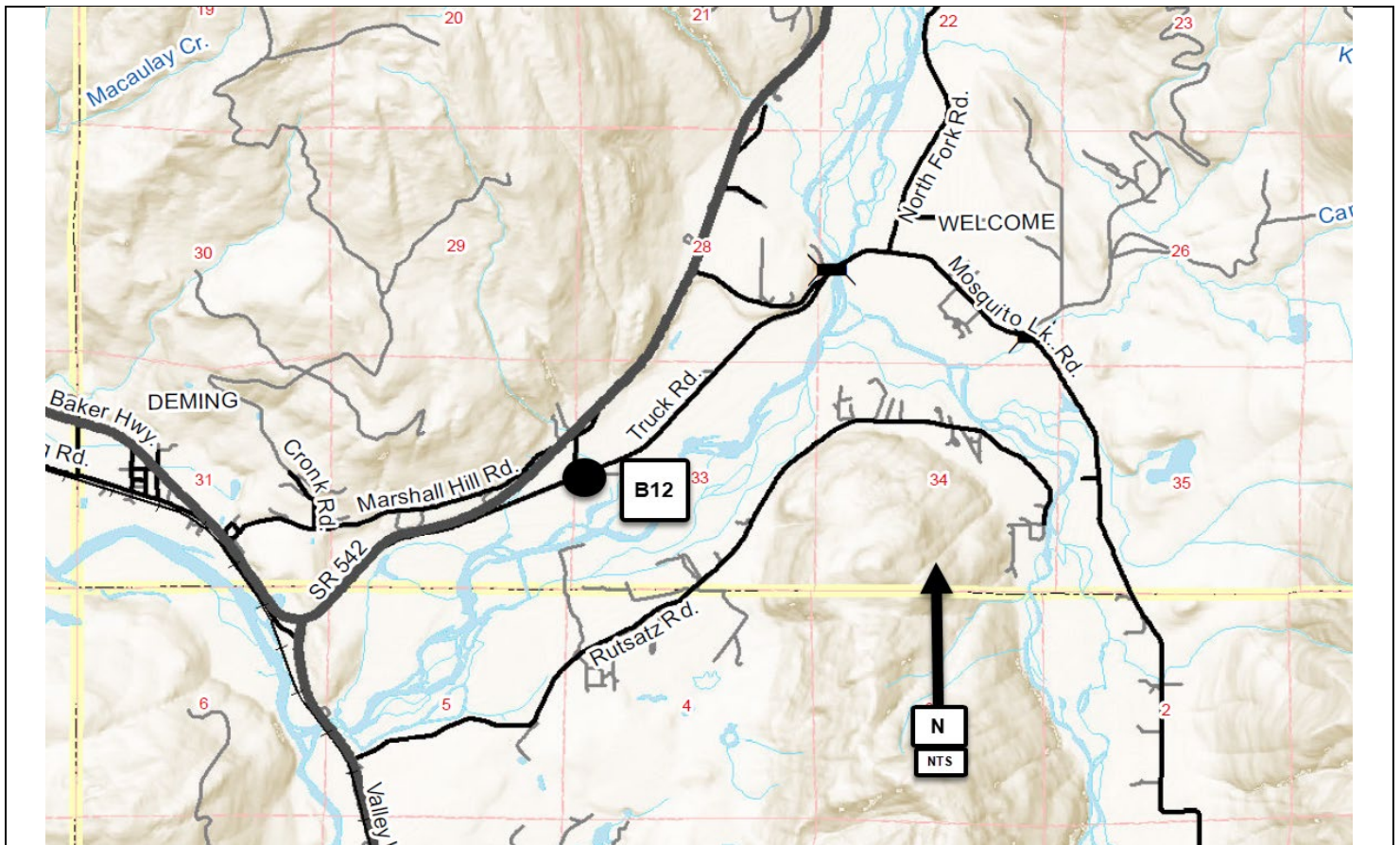
### Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$95,000

**Environmental Permitting** TBD

**Right-of-Way Acquisition (Estimate)** TBD

**County Forces (Estimate)** TBD



**Fox Road/California Creek  
Fish Passage  
CRP # 922007 ~~Not Assigned~~**

**Construction Funding Year(s):** TBD

**Project Narrative:**

This project is listed **#B13** on the 2022-2027 Six-Year Transportation Improvement Program. Project includes replacing the existing culvert that has been identified as a barrier to fish passage on Fox Road with a structure that meets current fish passage requirements.

**Project Status:** Project scoping and preliminary analysis will begin in 2022

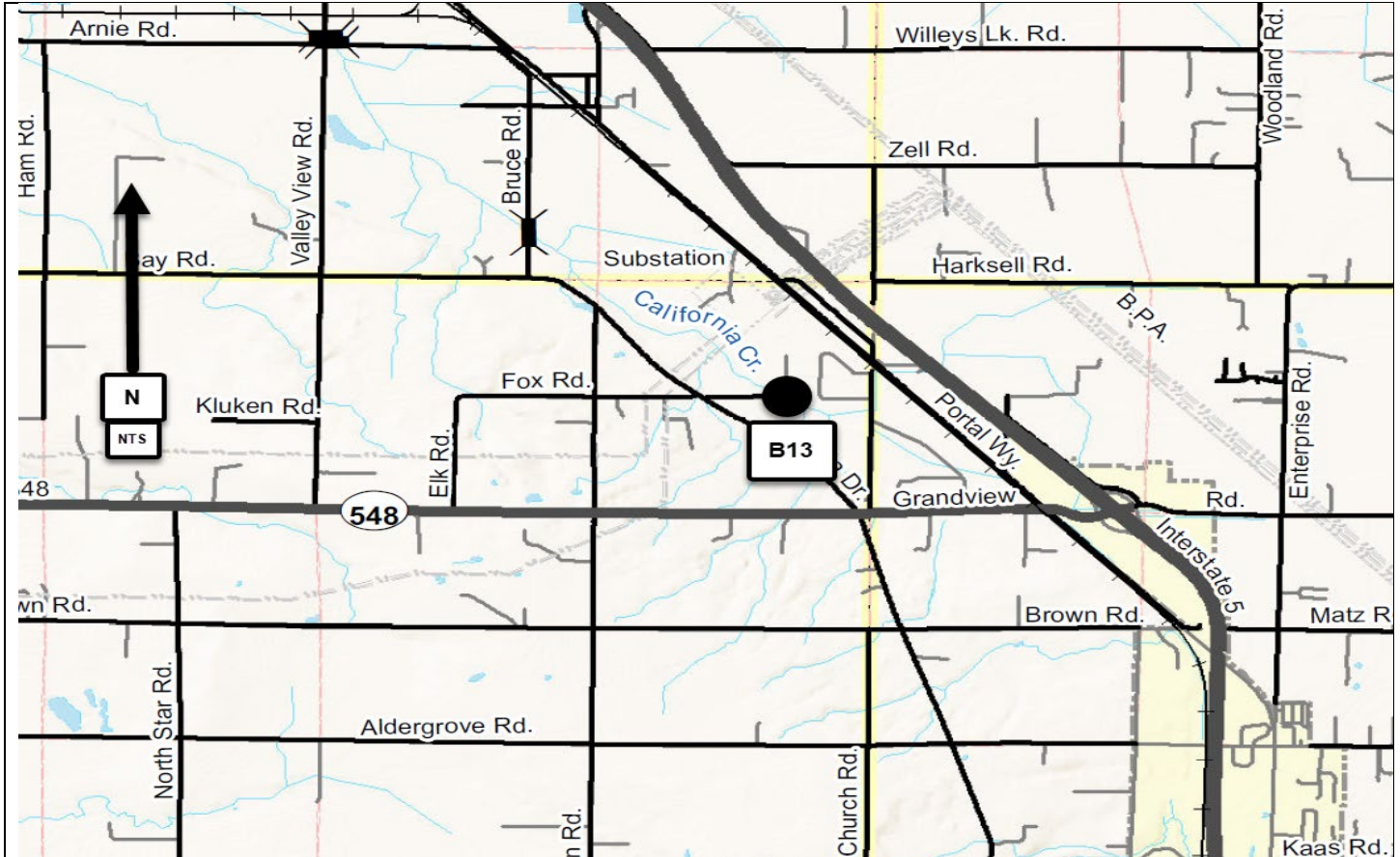
**Total Estimated Project Cost:** \$TBD

**Expenditures to Date:** \$0

**Funding Sources:**

Federal	
State	
Local	\$425,000

<b>Environmental Permitting</b>	SEPA, HPA, Shorelines, ACOE 404
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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 bridge to handle increased traffic during construction of the North Lake Samish Bridge No. 107 Replacement Project.

**Project Status:** Preliminary design and environmental permitting work underway. Construction scheduled 2022.

**Total Estimated Project Cost:** \$ 600,000

**Expenditures to Date:** \$ 75,000

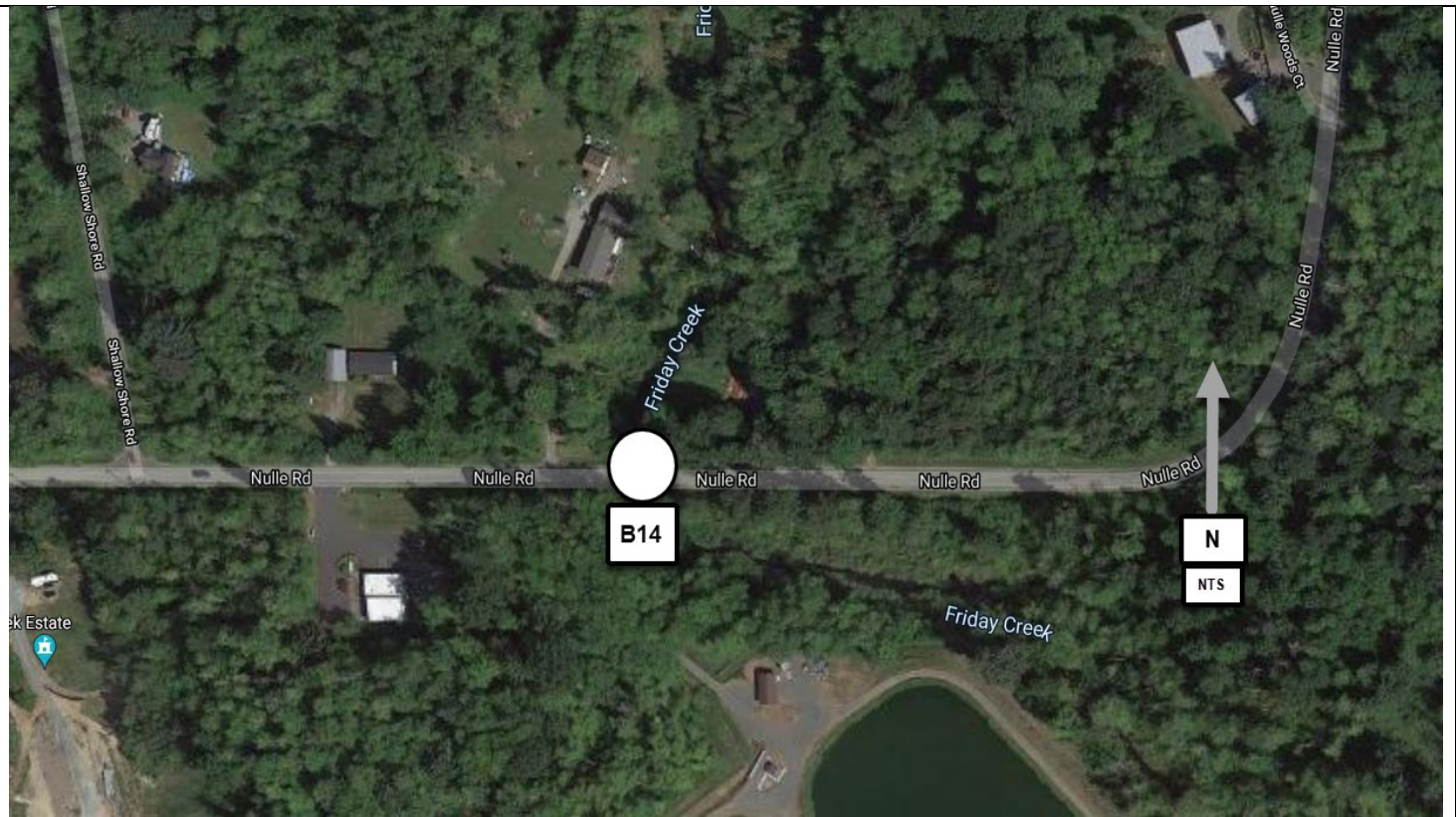
### Funding Sources:

Federal	\$ 0
State	\$ 0
Local	\$600,000

**Environmental Permitting** TBD

**Right-of-Way Acquisition (Estimate)** TBD

**County Forces (Estimate)** TBD



## Lummi Island Ferry System Modernization & Preservation Project

### CRP # 919008

**Construction Funding Year(s):** 2024

**Project Narrative:**

This project includes replacement of the Whatcom Chief with a 34 car vessel and modifications of the existing ferry terminals to accommodate the new vessel. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F1** on the 2022-2027 Six Year Transportation Improvement Program.

**Project Status:**

Design work for the new vessel and terminal modifications is underway. This work will coincide with the next cycle of funding by the County Road Administration Board and the Federal RAISE grant process

**Total Estimated Project Cost:** \$34,000,000

**Expenditures to Date:** \$500,000

**Funding Sources:**

Federal	\$ 20,000,000
State	\$ 2,000,000
Local	\$ 12,000,000

<b>Environmental Permitting</b>	TBD
<b>Right-of-Way Acquisition (Estimate)</b>	None Required
<b>County Forces (Estimate)</b>	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.

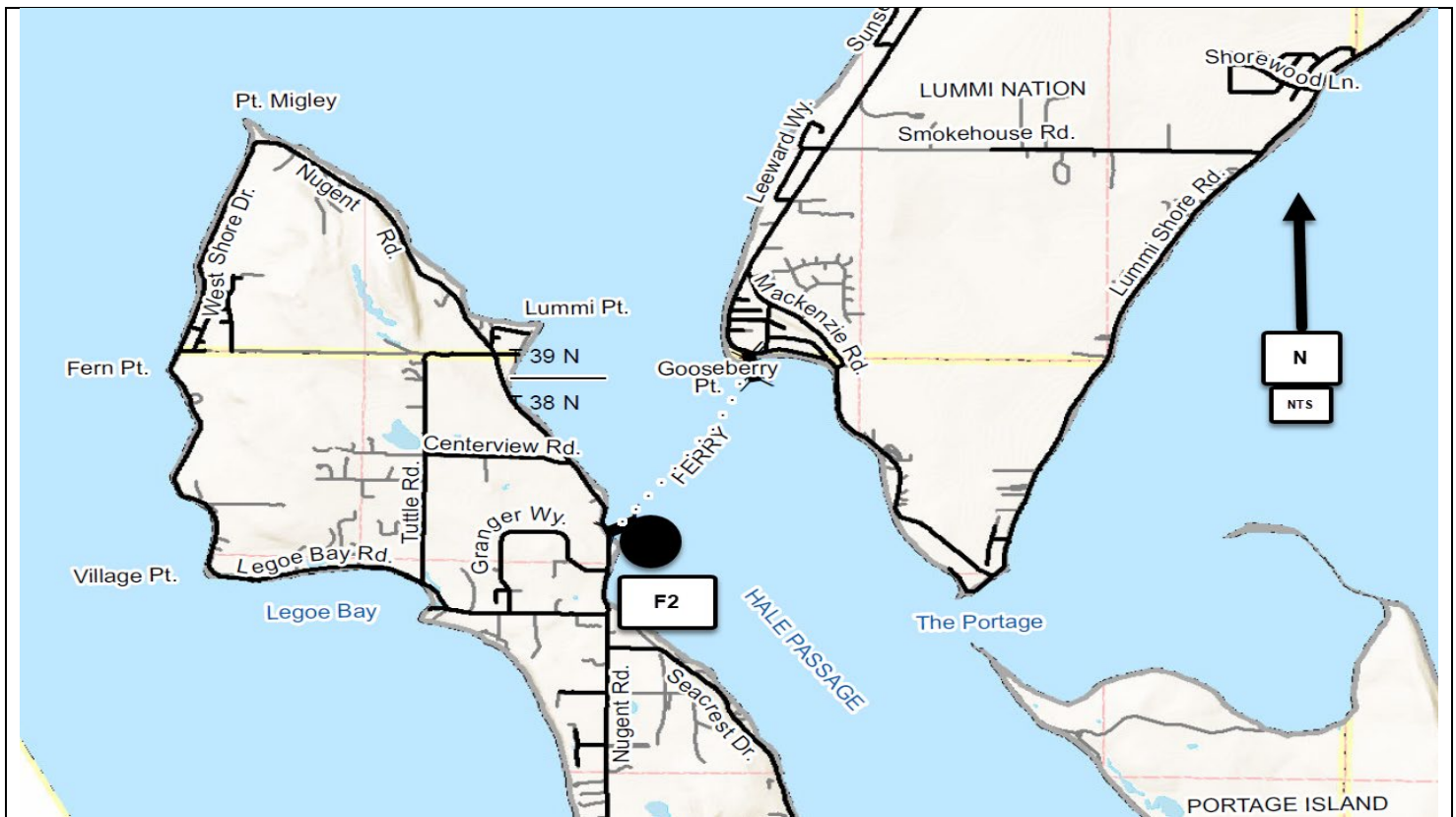
**Total Estimated Project Cost:** \$2,370,000

**Expenditures to Date:** \$220,000

### **Funding Sources:**

Federal	\$1,005,000 (FBP)
State	\$
Local	\$1,365,000

<b>Environmental Permitting</b>	HPA, CORPS 404, COUNTY SHORELINES, NEPA
<b>Right-of-Way Acquisition (Estimate)</b>	None Required
<b>County Forces (Estimate)</b>	N/A



## Relocation of Gooseberry Terminal CRP # 919009

**Construction Funding Year(s):** **TBD**

**Project Narrative:**

This project involves relocation of the Gooseberry Point Ferry Terminal. This work will be accomplished as outlined in the Lummi Island Ferry Service Level of Service Action Plan approved by the Whatcom County Council via Resolution 2018-026. This project is listed **#F3** on the 2022-2027 Six Year Transportation Improvement Program.

**Project Status:**

Early action items will likely include EIS and real estate work. This work will coincide with the next cycle of funding by the County Road Administration Board and the Federal RAISE grant process.

**Total Estimated Project Cost:** **TBD**

**Expenditures to Date:** **\$ 0**

**Funding Sources:**

Federal	\$0
State	\$0
Local	\$150,000

<b>Environmental Permitting</b>	None Required
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<b>Right-of-Way Acquisition (Estimate)</b>	None Required
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<b>County Forces (Estimate)</b>	None Required
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## 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)

<b>Environmental Permitting</b>	TBD
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<b>Right-of-Way Acquisition (Estimate)</b>	TBD
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<b>County Forces (Estimate)</b>	TBD
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Due to the nature of this item, no map exists. Council review and prioritization will be sought at the appropriate times.

## Right of Way Acquisition

### CRP # 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)

<b>Environmental Permitting</b>	TBD
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<b>Right-of-Way Acquisition (Estimate)</b>	TBD
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<b>County Forces (Estimate)</b>	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.

## 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)

<b>Environmental Permitting</b>	TBD
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<b>Right-of-Way Acquisition (Estimate)</b>	TBD
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<b>County Forces (Estimate)</b>	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.

<b>Total Estimated Project Cost:</b> TBD  <b>Expenditures to Date:</b> N/A	<b>Funding Sources:</b>	
	Federal	\$0
	State	\$0
	Local	\$300,000 (2022-2027)

<b>Environmental Permitting</b>	TBD
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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)

<b>Environmental Permitting</b>	N/A
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<b>Right-of-Way Acquisition (Estimate)</b>	N/A
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<b>County Forces (Estimate)</b>	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.

<b>Railroad Crossing Improvements</b> <b>CRP # 922015</b>
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<b>Construction Funding Year(s):</b>	<b>2022 - 2027</b>
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<b>Project Narrative:</b>
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Locations to be determined. Identification and prioritization to be addressed. This project is listed <b>#Y8</b> on the 2022-2027 Six Year Transportation Improvement Program.
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<b>Project Status:</b>
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Locations and prioritization of projects is on-going. Negotiations with BNSF will be a factor on timing and cost.
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<b>Total Estimated Project Cost:</b> \$300,000
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<b>Expenditures to Date:</b> - 0 -
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<b>Funding Sources:</b>	
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Federal	\$0
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State	\$0
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Local	\$300,000 (2022-2027)
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<b>Environmental Permitting</b>	TBD
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<b>Right-of-Way Acquisition (Estimate)</b>	TBD
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<b>County Forces (Estimate)</b>	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.
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## 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.

<b>Total Estimated Project Cost:</b> \$1,200,000  <b>Expenditures to Date:</b> - 0 -	<b>Funding Sources:</b>	
	Federal	\$0
	State	\$0
	Local	\$1,200,000 (2022-2027)

<b>Environmental Permitting</b>	SEPA, Cllg/CAO,
<b>Right-of-Way Acquisition (Estimate)</b>	TBD
<b>County Forces (Estimate)</b>	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: AB2021-590

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<b>File ID:</b>	AB2021-590	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	10/04/2021	<b>Entered by:</b>	JLassite@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council Planning and Development Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	10/26/2021	<b>Enactment #:</b>			

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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.

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## HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council Planning and Development Committee

---

**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 Dana Brown Davis, Clerk of the Council  
45

46 \_\_\_\_\_  
47 Barry Buchanan, Council Chair  
48

49       **APPROVED AS TO FORM:**

50       **WHATCOM COUNTY EXECUTIVE**  
51       **WHATCOM COUNTY, WASHINGTON**  
52

53 \_\_\_\_\_  
54 Civil Deputy Prosecutor  
55

56 \_\_\_\_\_  
57 Satpal Sidhu, County Executive  
58

59 (    ) Approved        (    ) Denied

60 Date Signed: \_\_\_\_\_



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-594

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<b>File ID:</b>	AB2021-594	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/12/2021	<b>Entered by:</b>	CHalka@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code Chapter 2.02 (County Council) to define absence and temporary disability

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Whatcom County Code Chapter 2.02 (County Council) to define absence and temporary disability as it relates to the Executive Pro Tempore serving in place of the Executive

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Proposed Ordinance, Proposed Ordinance - tracked changes

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE CHAPTER 2.02 (COUNTY COUNCIL)  
TO BETTER DEFINE ABSENCE AND TEMPORARY DISABILITY RELATING TO THE  
EXECUTIVE PRO TEMPORE SERVING IN PLACE OF THE EXECUTIVE**

**WHEREAS**, The Whatcom County Home Rule Charter, Section 3.26 (Executive Pro Tempore) states:

*The County Council, at its annual election, by majority vote, may designate one of its number as Executive Pro Tempore, or in lieu thereof, the Council may appoint any qualified person to serve as Executive Pro Tempore.*

*The Executive Pro Tempore shall hold office at the pleasure of the Council, and in case of the absence or temporary disability of the Executive, perform the duties of Executive except the Executive Pro Tempore shall not have power to appoint or remove any officer, or to veto any acts of the County Council.*

**WHEREAS**, the term "absence" as it refers to the role of the Executive is commonly considered to be an inability for a person to be present to perform his or her duties due to circumstances such as illness, vacation, or other obligations; and

**WHEREAS**, due to advances in technology it is now possible for most people to remain in contact and conduct virtual meetings with ease from almost anywhere in the world, effectively eliminating many of the situations which would prevent the Executive from efficiently performing his or her duties while physically absent from the County; and

**WHEREAS**, the term "temporary disability" is commonly considered "a physical disability which hampers a person's ability to discharge their responsibilities for a short period of time"; and

**WHEREAS**, the term "temporary disability" is not defined in County Code nor does it adequately reflect current definitions of impairment due to the use of certain medications.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Whatcom County Code Chapter 2.02 is hereby amended as shown in Exhibit A.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Karen Frakes (by email 10/19/2021)  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

## EXHIBIT A

### 2.02.070 Meetings – Annual reorganization and election of officers.

A. At its first committee of the whole or regular council meeting in January, the council shall schedule its annual reorganization. At this meeting, the council shall elect the chair, vice chair, the executive pro tempore and the members of all standing committees, each by an affirmative roll-call vote by a majority of the entire council, or by general consent when applicable. Prior to each reorganizational meeting, the council clerk or chairperson shall ask councilmembers to circulate to each other in writing their requests for committee assignments and other offices. No councilmember shall hold the position of chair more than two full consecutive years.

B. The chair of the council shall act as executive pro tempore in the absence of the regular executive pro tempore who was selected pursuant to the above procedure. Terms of office shall begin at the conclusion of the reorganizational meeting.

C. The executive pro tempore shall not assume the duties of Executive under Section 3.26 of the County Charter based on the physical “absence” of the Executive for periods of less than 30 days if the Executive remains available to the county staff and the county council by phone or video conferencing during normal business hours.

D. The term “temporary disability” shall include any period greater than 24 hours during which the executive is under the influence of any substance or medication, or is suffering from a medical condition which could reasonably be deemed sufficient to impair the Executive’s judgment to the degree that the executive would be unsafe to operate a motor vehicle under the laws of the State of Washington.

E. The Executive shall provide reasonable notice to the Deputy Executive and the Executive Pro Tempore of any anticipated absences or periods of inability to perform their duties.

F. In the temporary absence of the chairperson, the vice chairperson shall perform the duties and responsibilities of the chairperson. A temporary chairperson shall be elected should both the chairperson and vice chairperson be absent and shall serve during such absence. (Ord. 2017-081 Exh. A; Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE CHAPTER 2.02 (COUNTY COUNCIL)  
TO BETTER DEFINE ABSENCE AND TEMPORARY DISABILITY RELATING TO THE  
EXECUTIVE PRO TEMPORE SERVING IN PLACE OF THE EXECUTIVE**

**WHEREAS**, The Whatcom County Home Rule Charter, Section 3.26 (Executive Pro Tempore) states:

*The County Council, at its annual election, by majority vote, may designate one of its number as Executive Pro Tempore, or in lieu thereof, the Council may appoint any qualified person to serve as Executive Pro Tempore.*

*The Executive Pro Tempore shall hold office at the pleasure of the Council, and in case of the absence or temporary disability of the Executive, perform the duties of Executive except the Executive Pro Tempore shall not have power to appoint or remove any officer, or to veto any acts of the County Council.*

**WHEREAS**, the term "absence" as it refers to the role of the Executive is commonly considered to be an inability for a person to be present to perform his or her duties due to circumstances such as illness, vacation, or other obligations; and

**WHEREAS**, due to advances in technology it is now possible for most people to remain in contact and conduct virtual meetings with ease from almost anywhere in the world, effectively eliminating many of the situations which would prevent the Executive from efficiently performing his or her duties while physically absent from the County; and

**WHEREAS**, the term "temporary disability" is commonly considered "a physical disability which hampers a person's ability to discharge their responsibilities for a short period of time"; and

**WHEREAS**, the term "temporary disability" is not defined in County Code nor does it adequately reflect current definitions of impairment due to the use of certain medications.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Whatcom County Code Chapter 2.02 is hereby amended as shown in Exhibit A.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Karen Frakes (by email 10/19/2021)  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

## EXHIBIT A

### 2.02.070 Meetings – Annual reorganization and election of officers.

A. At its first committee of the whole or regular council meeting in January, the council shall schedule its annual reorganization. At this meeting, the council shall elect the chair, vice chair, the executive pro tempore and the members of all standing committees, each by an affirmative roll-call vote by a majority of the entire council, or by general consent when applicable. Prior to each reorganizational meeting, the council clerk or chairperson shall ask councilmembers to circulate to each other in writing their requests for committee assignments and other offices. No councilmember shall hold the position of chair more than two full consecutive years.

B. The chair of the council shall act as executive pro tempore in the absence of the regular executive pro tempore who was selected pursuant to the above procedure. Terms of office shall begin at the conclusion of the reorganizational meeting.

C. The executive pro tempore shall not assume the duties of Executive under Section 3.26 of the County Charter based on the physical "absence" of the Executive for periods of less than 30 days if the Executive remains available to the county staff and the county council by phone or video conferencing during normal business hours.

D. The term "temporary disability" shall include any period greater than 24 hours during which the executive is under the influence of any substance or medication, or is suffering from a medical condition which could reasonably be deemed sufficient to impair the Executive's judgment to the degree that the executive would be unsafe to operate a motor vehicle under the laws of the State of Washington.

E. The Executive shall provide reasonable notice to the Deputy Executive and the Executive Pro Tempore of any anticipated absences or periods of inability to perform their duties.

~~GE~~. In the temporary absence of the chairperson, the vice chairperson shall perform the duties and responsibilities of the chairperson. A temporary chairperson shall be elected should both the chairperson and vice chairperson be absent and shall serve during such absence. (Ord. 2017-081 Exh. A; Ord. 2010-044 Exh. A; Ord. 2008-004 Exh. A).



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-599

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<b>File ID:</b>	AB2021-599	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/13/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance establishing the Ferry Fare Capital Surcharge Fund

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requests establishment of a new special revenue fund to account for the \$1 per fare capital surcharge to be used exclusively for the construction of a new ferry vessel and improvements to the ferry terminals.

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### HISTORY OF LEGISLATIVE FILE

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

**ORDINANCE NO. \_\_\_\_\_**  
**ORDINANCE ESTABLISHING THE FERRY FARE CAPITAL SURCHARGE FUND**

**WHEREAS**, the Whatcom County Council adopted a Level of Service Ferry System Action Plan with Resolution 2018-026, and

**WHEREAS**, the Action Plan instructs the design and construction of a 34-car vessel with flexibility for future electric conversion, and terminal improvements, and

**WHEREAS**, on March 23, 2021 the Whatcom County Council unanimously approved a \$1.00 fare capital surcharge exclusively for the construction of a new ferry vessel and improvements to the ferry terminals with Ordinance 2021-012, and

**WHEREAS**, a new special revenue fund is necessary to properly account for this restricted revenue source,

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that a new fund is hereby established titled Ferry Fare Capital Surcharge Fund. This fund shall be used to account for the revenues and expenditures related to funding received in accordance with Ordinance 2021-012 Establishing a Fare Capital Surcharge for the Lummi Island Ferry System

**ADOPTED** 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 ( ) Denied

\_\_\_\_\_  
Approved by email/C Quinn/R Rydel  
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: AB2021-601

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<b>File ID:</b>	AB2021-601	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/13/2021	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 17, in the amount of \$4,967,500

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #17 requests funding from the Homeless Housing Fund:

1. To appropriate \$815,000 to fund increase to Commerce Housing and Essential Needs grant program.

From the American Rescue Plan Act Fund:

2. To appropriate \$1,000,000 to fund Laurel & Forest Street childcare facility.
3. To appropriate \$3,000,000 to fund Laurel & Forest Street affordable senior housing facility.

From Real Estate Excise Tax I Fund:

4. To appropriate \$120,500 to fund Courthouse 3rd Floor Judge's Chambers HVAC system.
5. To appropriate \$32,000 to fund Courthouse elevator water damage repairs.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Proposed Ordinance, Summary, Supplemental Requests

**ORDINANCE NO.**  
**AMENDMENT NO. 17 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
Homeless Housing Fund	815,000	(815,000)	-
American Rescue Plan Act Fund	4,000,000	-	4,000,000
Real Estate Excise Tax I Fund	152,500	-	152,500
Total Supplemental	<b>4,967,500</b>	<b>(815,000)</b>	<b>4,152,500</b>

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

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

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

WHATCOM COUNTY				
Summary of the 2021 Supplemental Budget Ordinance No. 17				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
Homeless Housing Fund	To fund increase to Commerce Housing and Essential Needs grant program.	<u>815,000</u>	<u>(815,000)</u>	<u>-</u>
American Rescue Plan Act Fund				
Non Departmental	To fund Laurel & Forest Street childcare facility.	1,000,000	-	1,000,000
Non Departmental	To fund Laurel & Forest Street affordable senior housing facility.	<u>3,000,000</u>	<u>-</u>	<u>3,000,000</u>
Total American Rescue Plan Act Fund		<u>4,000,000</u>	<u>-</u>	<u>4,000,000</u>
Real Estate Excise Tax I Fund				
AS-Facilities	To fund Courthouse 3rd Floor Judge's Chambers HVAC system.	120,500	-	120,500
AS-Facilities	To fund Courthouse elevator water damage repairs.	<u>32,000</u>	<u>-</u>	<u>32,000</u>
Total Real Estate Excise Tax I Fund		<u>152,500</u>	<u>-</u>	<u>152,500</u>
Total Supplemental		<u>4,967,500</u>	<u>(815,000)</u>	<u>4,152,500</u>

## Supplemental Budget Request

**Health**

**Human Services**

Suppl ID # 3523    **Fund** 122    **Cost Center** 122600    **Originator:** Ann Beck

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

**Name of Request:** Commerce HEN Grant Increase

**X**

*Einkaufman*

10/11/21

**Department Head Signature (Required on Hard Copy Submission)**

**Date**

Costs:	Object	Object Description	Amount Requested
	4334.0427	Homeless Grant Asst Program	(\$815,000)
	6610	Contractual Services	\$815,000
	<b>Request Total</b>		<b>\$0</b>

**1a. Description of request:**

We are requesting expenditure authority to utilize additional funding available from Washington State Department of Commerce to support housing and homeless programs. This supplemental increases the revenue and expense for this pass-through grant. The Housing and Essential Needs (HEN) grant allocation from Commerce covers the fiscal year of 7/1/21-6/30/22 and totals \$2,362,883. This request covers the remainder of the 2021 calendar year.

**1b. Primary customers:**

Those qualifying for the Housing and Essential Needs Program (HEN), which requires applicants be unable to work for at least 90 days due to a disability, and have zero income or receive Aged, Blind and Disabled cash benefits.

**2. Problem to be solved:**

Households who are eligible for this assistance do not have sufficient income to access or retain housing independently, and may need resources for essential needs.

**3a. Options / Advantages:**

Housing and essential needs such as hygiene and sanitation products are critical to supporting people whose income is not sufficient to access housing without assistance.

**3b. Cost savings:**

HEN provides state funding to counties to serve those at-risk of or experiencing homelessness, thereby saving local costs being used to meet the basic needs of eligible households.

**4a. Outcomes:**

It is expected that between 7/1/2021 – 6/30/2022, 350 HEN-eligible households will receive essential needs items and cleaning and move-in supplies; and 230 households will receive HEN rent and utility assistance.

**4b. Measures:**

- Number of HEN eligible households served each month and year to date
- Average amount of subsidy per HEN household
- Number of HEN eligible households defined
- System performance measures as set by the WA State Department of Commerce

**5a. Other Departments/Agencies:**

Opportunity Council administers HEN funding and the Department of Social and Health Services determines eligibility.

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

Barbara Johnson-Vinna, Housing Program Specialist in the Health Department

## Supplemental Budget Request

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**Health****Human Services**

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*Suppl ID # 3523***Fund 122****Cost Center 122600****Originator: Ann Beck****6. Funding Source:**

Washington State Department of Commerce, Housing and Essential Needs grant.

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3524

Fund 138

Cost Center

Originator: Tawni Helms

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Laurel and Forest St Project - Childcare

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	6610	Contractual Services	\$1,000,000
	<b>Request Total</b>		<b>\$1,000,000</b>

### 1a. Description of request:

ARPA funding will be used to repurpose an existing property to develop the build out of a childcare facility that can serve up to 65 children. Whatcom County will contract with the Opportunity Council for the development of this project located at the Laurel and Forest Street. As a repurposed childcare facility it will be used to increase the capacity for desperately needed childcare services throughout Whatcom County. This project is located in the census tract near downtown Bellingham.

### 1b. Primary customers:

Whatcom County families in need of affordable child care.

### 2. Problem to be solved:

Childcare services are limited throughout Whatcom County. Childcare needs far outweigh the community's availability of affordable childcare opportunities in Whatcom County.

The COVID -19 Community Health Impact Assessment showed that 80% of Whatcom County child care providers closed temporarily during the pandemic. As a result, 74% of respondents showed an increased difficulty balancing work and caring for children leading to a direct impact on families' income, housing, mental health and more. Today, 67% of child care centers are at risk of closing and one in four childcare facilities remain closed. The amount of currently available child care for kids under age 5 will need to triple by the year 2025 in order to meet Whatcom County's anticipated child care needs. Kindergarten readiness for BIPOC students are consistently lower than other students in Whatcom County. Families unable to find affordable, quality childcare are often unable to return to work. Increasing the availability of childcare services for working families will encourage economic recovery in our community.

### 3a. Options / Advantages:

Whatcom County is committed to addressing the childcare crisis.

### 3b. Cost savings:

n/a

### 4a. Outcomes:

A 5,000 square foot facility accomodating 3 classrooms will provide up to 65 childcare spaces to families in need of childcare.

### 4b. Measures:

The Laurel and Forest Street property will be re-purposed as a child care facility and will begin serving Whatcom County families needing childcare services.

### 5a. Other Departments/Agencies:

Tuesday, October 12, 2021

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

*Status:* Pending

### Non-Departmental

Suppl ID # 3524

**Fund** 138

**Cost Center**

**Originator:** Tawni Helms

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

**6. Funding Source:**

ARPA

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3525

Fund 138

Cost Center

Originator: Tawni Helms

Expenditure Type: One-Time

Year 1 2021

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: ARPA Laurel & Forest Project-Affordable Sr.Housing

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6610	Contractual Services	\$3,000,000
	Request Total		\$3,000,000

### 1a. Description of request:

Whatcom County is committed to addressing the housing crisis through a multi-faceted approach. ARPA funding will be dedicated to fund the buildout and re-purposing of the property located at Laurel and Forest St. Whatcom County will work with community agencies to provide new affordable housing to seniors. Because the housing crisis has only been exacerbated by the COVID pandemic the need grows more urgent. Acquiring new affordable housing units will help support the effort to reduce homelessness in Whatcom County. This project is located in the census tract near downtown Bellingham.

### 1b. Primary customers:

Unhoused seniors and Whatcom County citizens.

### 2. Problem to be solved:

Whatcom County has a housing crisis. According to the COVID-19 Community Health Impact Assessment the lack of affordable housing is persistent and worsening. In June of 2021, 14% of Washington residents reported being behind on rent. That equates to 4,655 households in Whatcom County.

ARPA funding will be used to address this problem by developing and re-purposing a building into a new senior housing complex. This will afford unhoused seniors the opportunity to have consistent, stable and affordable housing. Mitigating the housing crisis through a multi-faceted approach will help to ensure the broad spectrum of housing needs are met.

### 3a. Options / Advantages:

### 3b. Cost savings:

### 4a. Outcomes:

56 new affordable one-bedroom apartments will be made available to unhoused seniors.

### 4b. Measures:

The new affordable housing units will be filled with tenants.

### 5a. Other Departments/Agencies:

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

### 6. Funding Source:

ARPA

Tuesday, October 12, 2021

Rpt: Rpt Suppl Regular

# Supplemental Budget Request

Status: Pending

## Administrative Services

## Facilities Management

Suppl ID # 3521

Fund 326

Cost Center

Originator: Rob Ney

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

Name of Request: Courthouse 3rd Fl Judges Chambers HVAC

X *R*

Department Head Signature (Required on Hard Copy Submission)

10/12/21

Date

Costs:	Object	Object Description	Amount Requested
	6190	Direct Billing Rate	\$2,500
	7060	Repairs & Maintenance	\$118,000
	Request Total		\$120,500

### 1a. Description of request:

There is one area in the Courthouse that does not have conditioned air. This 3rd floor area is only served by radiant boiler heaters, and does not have a fresh air alternative other than operable windows. Facilities would like to bring this portion of the courthouse into the existing HVAC system, providing fresh air, and filtered heating and cooling. This is even more important with COVID protocols on air exchanges.

The original 1993 plans for the Courthouse addition identified this portion of the Courthouse as a "future HVAC expansion" area. This effort would be consistent with that design call-out.

### 1b. Primary customers:

Staff working in this portion of the 3rd floor.

### 2. Problem to be solved:

The CDC has issued guidelines for best practices for HVAC in commercial buildings as it relates to the fight against COVID. This portion of the Courthouse does not have conditioned air, and therefore is not compliant with these recommendations. Facilities would like to extend conditioned/filtered air into this last remaining area.

### 3a. Options / Advantages:

Opening the windows is also an option in the winter for air exchanges, but not viable during the winter months.

The safety and security of our employees as well as the public within the Courthouse is paramount. Extending the HVAC system into this area of the Courthouse is a high priority.

### 3b. Cost savings:

There are not many options for cost saving for this improvement.

### 4a. Outcomes:

Facilities will contract with a local vendor for these repairs.

### 4b. Measures:

The improvements will be implemented within budget.

When improvements are installed and the HVAC system is extended.

### 5a. Other Departments/Agencies:

The impacts could only be considered advantageous. However there will be slight disruption to the tenants during the construction of these new improvements.  
Superior Court.

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

Tuesday, October 12, 2021

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

*Status:* Pending

**Administrative Services**

**Facilities Management**

*Suppl ID #* 3521

**Fund** 326

**Cost Center**

**Originator:** Rob Ney

Rob Ney, Project & Operations Manager

**6. Funding Source:**

REET 1

# Supplemental Budget Request

Status: Pending

## Administrative Services

## Facilities Management

Suppl ID # 3514 Fund 326 Cost Center Originator: Rob Ney

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

Name of Request: Elevator Water Damage Repairs

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7060	Repairs & Maintenance	\$32,000
	Request Total		\$32,000

### 1a. Description of request:

One of the main public elevators was damaged by a failure in the HVAC system, causing severe water damage to elevator Cab 4. This elevator cab is out of service, and will remain out of service, until this emergency repair can be made. Facilities Management has an existing maintenance contract with Eltec Elevator, however, unanticipated repair services are outside of the scope of the contract.

### 1b. Primary customers:

Any staff or citizen utilizing the Courthouse elevator conveyance system.

### 2. Problem to be solved:

A hydronic HVAC unit failed, spilling a substantial amount of water onto elevator Cab 4. This water damage shorted out major components of the elevator, causing Facilities and Eltec to tag out the elevator. This conveyance remains unusable until such time repairs can be made.

### 3a. Options / Advantages:

There are no other options but to repair the elevator.

The safety and security of our employees as well as the public within the Courthouse is paramount. The public elevators are highly used to gain access to the upper Court floors of the Courthouse.

### 3b. Cost savings:

There are not many options for cost saving for this repair

### 4a. Outcomes:

Facilities will implement the repairs as soon as possible utilizing existing repair and maintenance funds. However it is projected that this repair may result in a shortfall of funds towards the end of the year. Once approved, these funds would be placed back in the repair and maintenance budget.

### 4b. Measures:

The elevator will be repaired.

When improvements are installed and the elevator is back in service.

### 5a. Other Departments/Agencies:

The impacts could only be considered advantageous.

All County departments within the Courthouse would receive benefit for the improvements.

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

Rob Ney, Project & Operations Manager

### 6. Funding Source:



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-606

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<b>File ID:</b>	AB2021-606	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	10/15/2021	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	10/26/2021			<b>Enactment #:</b>	

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Primary Contact Email: [cstrong@co.whatcom.wa.us](mailto:cstrong@co.whatcom.wa.us) <<mailto:cstrong@co.whatcom.wa.us>>

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

Ordinance adopting amendments to the Whatcom County Code Title 20, Zoning, to provide additional affordable housing options, including allowing and regulating tiny homes and allowing duplexes in planned unit developments

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

Proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options by allowing and regulating tiny homes and allowing duplexes in planned unit developments.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff report, Proposed ordinance, Exhibit A

**Whatcom County  
Planning & Development Services  
Staff Report**

**Affordable Housing Options**

**I. File Information**

**File #:** PLN2021-00012

**File Name:** Affordable Housing Options

**Applicant:** Whatcom County Planning and Development Services (PDS)

**Project Summary:** Proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options by allowing and regulating tiny homes and allowing duplexes in planned unit developments.

**Location:** Countywide.

**Attachments**

- Draft Ordinance
- Exhibit A – Proposed Amendments

**II. Background**

The Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes within mobile home or RV parks or on individual lots, as newly authorized under amendments to RCW 58.17.040 via ESSB 5383. Staff is also proposing amendments to the Planned Unit Development (PUD) code to allow and encourage duplexes in urban growth areas. Both are intended to provide additional affordable housing options for Whatcom County citizens.

**Tiny Homes**

**What are Tiny Homes?**

To decipher how best to develop the regulatory structure to allow tiny homes, staff first identified the key characteristics of the various types of tiny homes to compare with our existing types of analogous residential units. Broadly, but in more detail in Table 1, these characteristics have to do with what type of state or federal license or certification they can obtain, whether or not they're self-contained<sup>1</sup>, and whether they have chassis and axles/wheels, all of which have to do with whether they are intended or can be used for long-term (residential) or short-term (recreational) use. There are other differences, like how much insulation they have or whether they have basic sanitary facilities such as toilets, showers, and sinks, but these are built into the certification/licensing standards and the characteristics we've used seem to suffice for classification.

<sup>1</sup> Meaning do they have tanks to hold water and sewage and have batteries for power, or do they need to be connected to utilities to operate?

Based on this analysis, we have identified four types of tiny homes, each corresponding to one of our existing unit types. The two that are intended for long-term residential use are:

- *Site-Built Tiny Homes* are built on-site, are not self-contained, are intended for long-term use, and meet the International Residential Code (IRC) standards. They are analogous to standard site-built homes, except that they're smaller (< 400 sq. ft.).
- *Manufactured Tiny Homes* are built off-site (generally at a manufacturing plant) with a chassis, axles, and wheels and transported to their final location (though the wheels may be removed) where the unit is placed on a permanent foundation. They are not self-contained, are intended for long-term use, and would have to meet the IRC standards *or* be HUD certified *and* be L&I certified as a permanent dwelling unit. They are analogous to standard mobile (or manufactured) homes, except that they're smaller.

The other types of tiny homes that are getting a lot of interest are Tiny Homes on Wheels (or THOWs, and yes, a real acronym). These tend to be homemade but, because of their construction standards, they are only intended and can only be certified for short-term recreational use or occupancy. But even among them, based on key characteristics, there are two different types. We're designating them:

- *Type 1 Tiny Homes on Wheels* have a chassis, axles, and wheels and are intended for trailering. They are *not* self-contained so must be hooked up to utilities. They do not meet the IRC standards nor are they certified by HUD for long-term residential use, but can be certified by L&I for short-term recreational use. And they must be licensed by the state Department of Licensing for transport on the highways. They are analogous to park model trailers.
- *Type 2 Tiny Homes on Wheels* are similar to Type 1 THOWs, but *are* self-contained, meaning they have tanks to hold water and sewage and have batteries for power so that they don't always need to be connected to utilities. They do not meet the IRC standards nor can they be certified by HUD for long-term residential use, but can be certified by L&I for short-term recreational use. And they must be licensed by the state Department of Licensing for transport on the highways. They are analogous to recreational vehicles (RVs).

Regarding building permit requirements, please note that the Council already adopted the newest International Residential Code, including Appendix Q, which contains the building code rules for tiny homes.

We would also like to point out that staff met several times with some tiny home proponents who proposed a third type of THOW. This type wouldn't meet IRC or HUD standards, but would be based on standards we specifically adopt in our code. These standards, they claimed, would be based on ANSI standards (what L&I uses to certify RVs) plus some additional standards (they referred to them as ANSI++) and our Building Official would have to certify them for use in Whatcom County. However, this approach would create significant jurisdictional regulatory inconsistencies since such units wouldn't be able to be used in any other jurisdiction (including the cities in Whatcom County) as they would only be "certified" for use in unincorporated Whatcom County under our own unique standards.

These proponents were also asking that these types of THOWs be able to be used for guest lodging for longer than 120 days<sup>2</sup>, which is our standard "temporary recreational occupancy" time limit under existing code. Extending temporary recreational occupancy would essentially make these THOW's

<sup>2</sup> For all Temporary Recreational Occupancies – On individual lots, the maximum length of stay of any recreational vehicle on a lot may not exceed a total of 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days nor more than 30 days total per calendar year.

permanent accessory dwelling units and raise potential GMA challenges and cause greater impacts that come with such increased densities, especially in rural areas.

Council should also be aware that staff tried very hard to figure out a way to allow “tiny home villages” (including those allowing site built tiny homes) in rural areas. However, GMA rural density restrictions significantly limit the potential for such “villages” in rural areas—meaning they would have to meet the underlying rural low density zoning just like any other subdivision. Our conclusion was that such tiny home villages are more likely to be created in cities or UGAs (which allow higher urban densities) and then only when adequate utilities are available, which our cities generally won’t extend until the property is annexed. But we do have existing (nonconforming at least in terms of density) mobile home and RV parks, so allowing the appropriate type of tiny homes within them at least furthers the affordable housing goal.

### **Allowing Duplexes in Planned Unit Developments**

Another amendment proposed as a way to increase affordable housing options is to allow duplexes in certain zones when a project is developed as a Planned Unit Development (PUD) (WCC Chapter 20.85). PUDs:

- Allow certain uses beyond those allowed in the underlying zone when a project is developed as a planned neighborhood community;
- Can only be developed within Urban Growth Areas and have to be at least two acres in size (except under certain conditions listed in WCC 20.85.020);
- Have additional standards for buffering, open space, circulation, access, parking, storage, and utilities;
- Allow for increased densities (WCC 20.85.108);
- Allow a relaxation of dimensional standards (WCC 20.85.109); and,
- Can only be approved by Council.

Currently PUDs allow single-family and multi-family residential uses, but not duplexes. To rectify this incongruity and help promote affordable housing, staff is proposing amendments to WCC 20.85.050.

Table 1. Defining characteristics of the various types of "homes"

Characteristic	Site-Built Home	Site-Built Tiny Home	Manufactured (Mobile) Home	Manufactured Tiny Home	Park Model Trailer	Type 1 Tiny Home on Wheels	Recreational Vehicle	Type 2 Tiny Home on Wheels
Meets IRC standards for permanent dwelling unit	Yes	Yes	Yes	Yes	No	No	No	No
<b>OR</b> Is HUD certified	No	No	Yes	Yes	No	No	No	No
Is L&I certified for Use <sup>3</sup>	No	No	Yes, as a permanent dwelling unit	Yes, as a permanent dwelling unit	Yes, for recreational use	Yes, for recreational use	Yes, for recreational use	Yes, for recreational use
Is DOL licensed	No	No	No	No	No	No	Yes	Yes
Is intended/ licensed for long-term or short-term residential use	long-term	long-term	long-term	long-term	short-term	short-term	short-term	short-term
Is self-contained (wastewater, water, power) (if not, must be connected to utilities)	No	No	No	No	No	No	Yes	Yes
Has chassis and axles/wheels	No	No	Yes when manufactured, but wheels removed once sited	Yes when manufactured, but wheels removed once sited	Yes, when manufactured, but wheels removed once sited	Yes, when manufactured, but wheels removed once sited	Yes	Yes

<sup>3</sup> Certified as a (long-term) permanent dwelling unit or for (short-term) recreational use, as noted.

### III. Amendments

The proposed amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Here is an overview, though.

#### Proposed Tiny Home Regulatory Structure

Based on the characteristics shown in Table 1 each of the four types of tiny homes corresponds or is analogous to a type of (either long- or short-term) residence that the County already regulates. Thus, to simplify or streamline the means to regulate these units, we can just define each of these types of tiny homes as one of our existing types and they would be regulated under existing regulations for that type.

So staff is proposing to add definitions for each of the types: “Tiny Homes,” with subcategories for “site-built tiny homes” and “manufactured tiny homes”; and “Tiny Homes on Wheels,” with subcategories for “Type 1 THOWs” and “Type 2 THOWs” (see Exhibit A, §20.97.435.03 & §20.97.435.04). Then we’re proposing to amend the definitions for “Mobile Home” to include “Manufactured Tiny Homes” (Exhibit A, §20.97.250), “Recreational Vehicle” to include “Type 2 THOWs” (Exhibit A, §20.97.335), and “Park Model Trailer” to include “Type 1 THOWs” (Exhibit A, §20.97.292) (plus some grammatical edits).

With these definitional amendments, each of these tiny home types would then be allowed wherever their existing corresponding standard type is allowed under existing code:

- Site-built tiny homes would generally be allowed wherever and under whatever circumstances and standards standard site-built homes are allowed (either as a primary use or an accessory dwelling unit (ADU));
- Manufactured tiny homes would generally be allowed wherever and under whatever circumstances and standards standard mobile (or manufactured) homes are allowed (as a primary use, an ADU, or in a mobile home park);
- Type 1 THOWs would generally be allowed wherever and under whatever circumstances and standards park model trailers are allowed (as temporary guest lodging or in an RV park in a space designated for park models, meaning they have utility hookups); and,
- Type 2 THOWs would generally be allowed wherever and under whatever circumstances and standards recreational vehicles are allowed (as temporary guest lodging or in an RV park).

Table 2 more specifically identifies in which zones the various tiny home types would be allowed, as what type of use, and what permit would be required. These are identical to where we currently allow their existing counterpart (single-family residences, mobile homes, park model trailers, and recreational vehicles). Do note, however, that for simplicity’s sake there may be additional standards or requirements in some zones not shown in the table, but they’d be the same as for their counterparts.

Apart from these definitional amendments, staff is also proposing to clarify our Mobile Home and RV Park Standards. First, we’re proposing to separate the two into distinct sections. We’re also identifying the process by which such a park can be permitted (binding site plan or condominium), and that CC&R’s must be submitted and approved (so that we can ensure long-term maintenance and operations are dealt with properly). Apart from that, we’re keeping the rules that applied to both in both, but putting the rules that only apply to one type of park in their respective sections. (See Exhibit A, §20.80.950 and §20.80.955.)

Under the proposed regulations, one could develop a mobile home park for mobile homes, manufactured tiny homes, or a mix of the two; and an RV park for RV’s, Type 2 THOWs, or a mix of the two. Mobile home parks are allowed as a conditional use in the Resort Commercial (RC), Urban

Residential Mixed (UR-MX), and Urban Residential – Medium Density (URM) Districts. Recreational vehicle (RV) parks are allowed as a conditional use in the Resort Commercial (RC), Tourist Commercial (TC), and Point Roberts Special Districts.

Table 3 shows how many mobile home and RV parks currently exist in the County. In total there are 39 mobile home parks and 7 RV parks, containing 2,858 spaces, 1,881 of which can be used for park models or Type 1 THOWS.

#### **Duplexes in Planned Unit Developments**

While most of the changes to WCC 20.85.053 shown in Exhibit A are just cleaning up grammar, the two that are policy changes are where “duplexes” has been added to subsections (1) and (2).

## **IV. Comprehensive Plan Evaluation**

The proposed amendments to the regulations (WCC Title 20) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Particularly relevant are:

<b>Goal 3C:</b>	<b>Create opportunity for a broad range of housing types and encourage mixed affordability.</b>
Policy 3C-1:	Support lot clustering, varied lot sizes, small-scale multi-family dwellings, accessory housing, especially accessory dwelling units (ADUs) in single-family zoning, and reductions in infrastructure requirements for subdivisions as incentives for development of housing obtainable by purchasers with the greatest possible mix of needs and household incomes.
Policy 3C-3:	Support development of manufactured and mobile home parks and establish design criteria that will enable them to fit into the surrounding community.
<b>Goal 3E:</b>	<b>Provide for future housing needs by responding to changing household demographics.</b>
Policy 3E-1:	Review and revise existing regulations to identify inhibitions to housing for the varying preferences of those needing housing. Focus on population segments with particular needs such as temporary, transitional, or emergency housing.
<b>Goal 3F:</b>	<b>Provide incentives to create affordable housing.</b>
Policy 3F-3:	Support innovative housing ideas including co-housing (essentially a micro-community with some centralized facilities), elder cottages (housing units for healthy but aging family members), accessory dwelling units (ADUs) in single family zoning of all jurisdictions, including cottage designs available at planning department front desk, and shared living residences or group quarters in UGAs, and educate the public about them.

**Table 2. Zoning Districts where Tiny Homes would be allowed (and by what Permit<sup>4</sup>) under the proposed rules**

Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Urban Residential (UR)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit<sup>5</sup> (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> <li>Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence<sup>6</sup> (ADM)</li> <li>Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>
Urban Residential – Medium Density (URM)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> <li>Temporary Caregiver/ Invalid Residence (AAU)</li> <li>Mobile Home Parks (CUP)</li> <li>Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Urban Residential Mixed (UR-MX)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> <li>Temporary Caregiver/ Invalid Residence (AAU)</li> <li>Mobile Home Parks (CUP)</li> <li>Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Residential Rural (RR)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> <li>Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> <li>Temporarily within pre-existing recreational subdivisions of the Foothills Subarea (ADM)</li> </ul>
Rural Residential-Island (RR-I)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Eliza Island (EI)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> </ul>	<ul style="list-style-type: none"> <li>Primary residence (P)</li> </ul>		

<sup>4</sup> P = Permitted; ACC = Accessory Use; ADM = Administrative Approval; CUP = Conditional Use

<sup>5</sup> For all ADUs – Some zoning districts have a minimum lot size requirement for detached ADUs and some areas require that accessory apartments and detached ADUs are consistent with the underlying zoning.

<sup>6</sup> For all Temporary Caregiver/Invalid Residences – One year, renewable, plus additional standards.

Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Rural (R)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>
Point Roberts Transitional Zone (TZ)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>
Agriculture (AG)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Farm Worker Residence (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Farm Worker Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Farm Worker Residence (ADM)</li> </ul>
Rural Forestry (RF)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Forestry Worker Residence (ADM)</li> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Caregiver/ Invalid Residence (ADM)</li> <li>• Temporary Recreational Occupancy<sup>7</sup> (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily<sup>8</sup> in an RV Park (P)</li> </ul>
Commercial Forestry (CF)				<ul style="list-style-type: none"> <li>• Temporary (6 mos.) living quarters for trail crews, fire crews, nursery crews, logging crews, maintenance crews and watchmen (P)</li> </ul>
Recreation & Open Space (ROS)	<ul style="list-style-type: none"> <li>• Caretaker's Residence (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Caretaker's Residence (P)</li> </ul>		
Rural General Commercial (RGC)				
Neighborhood Commercial Center (NC)				

<sup>7</sup> For all Temporary Recreational Occupancies – On individual lots, the maximum length of stay of any recreational vehicle on a lot may not exceed a total of 120 days per calendar year; provided, that no accessory guest RV shall remain on the subject lot for more than 14 consecutive days nor more than 30 days total per calendar year.

<sup>8</sup> In RV Parks the maximum length of stay may not exceed 180 days for any one-year time period.

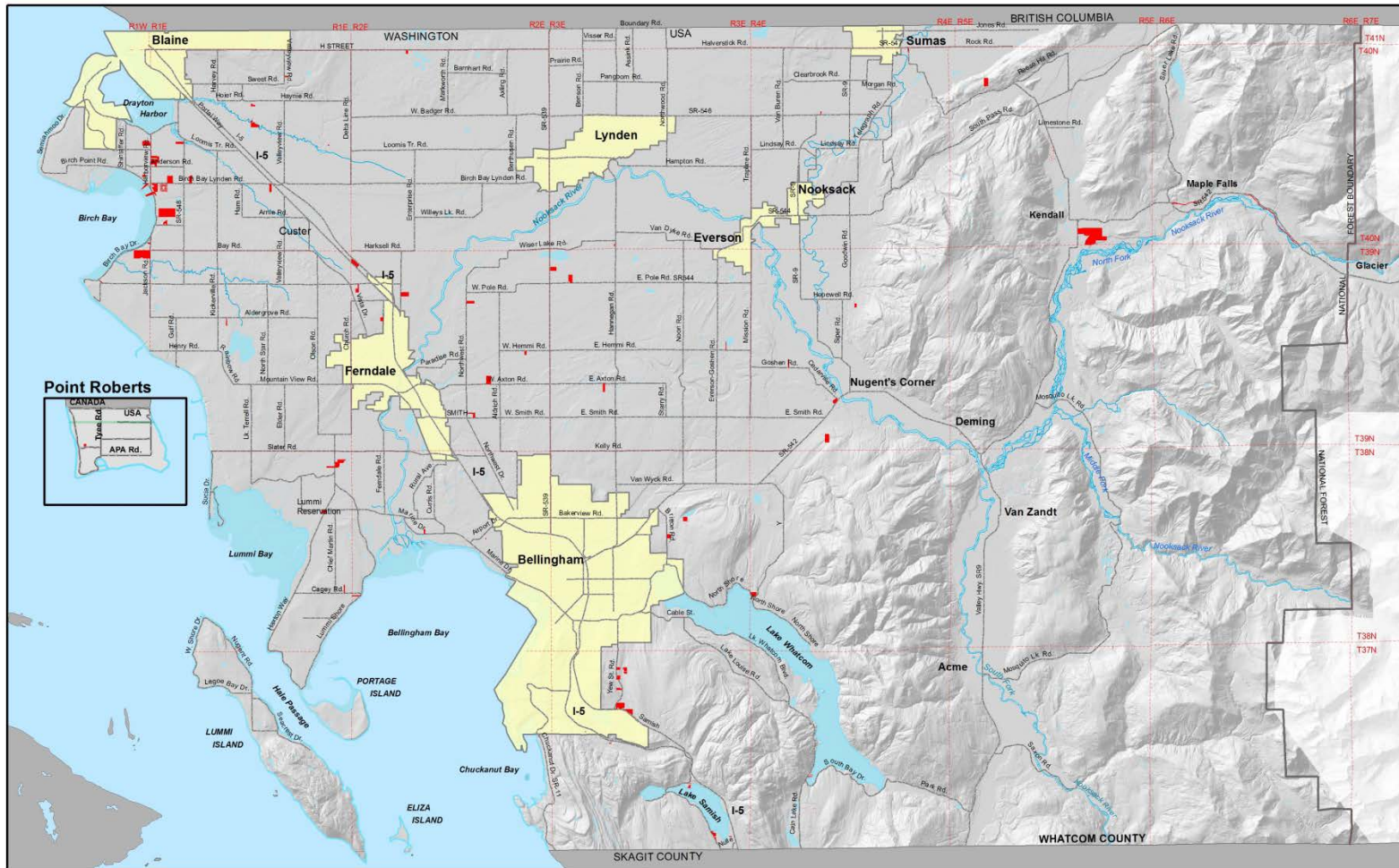
Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Small Town Commercial (STC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>		<ul style="list-style-type: none"> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
General Commercial (GC)				
Tourist Commercial (TC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
Resort Commercial (RC)	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: none"> <li>• Primary residence (P)</li> <li>• Accessory Dwelling Unit (ADM)</li> <li>• Mobile Home Parks (CUP)</li> <li>• Sited in a Mobile Home Park (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary Recreational Occupancy (P)</li> <li>• Recreational Vehicle Parks (CUP)</li> <li>• Temporarily in an RV Park (P)</li> </ul>
Light Impact Industrial (LII)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
General Manufacturing (GM)				
Heavy Impact Industrial (HII)				
Rural Industrial And Manufacturing (RIM)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
Airport Operations (AO)	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>	<ul style="list-style-type: none"> <li>• Security/Caretaker Residence (ACC)</li> </ul>		
Point Roberts Special District (overlay zone)	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone, plus:</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>	<ul style="list-style-type: none"> <li>• Allows whatever is allowed in the underling zone, plus:</li> <li>• Temporary Recreational Occupancy (P)</li> </ul>
Cherry Point Industrial (CP)				

**Table 3. Mobile Home & RV Parks in Whatcom County**

Name	Type	Zone	Acres	Assessor LUCODE	Total No. of Units	No. of Park Model Spaces	No. of MH Spaces
Agate Bay Mobile Estates	MH Park - Leased Spaces	R5A	10.9	1525 M/H PK 25 SP	25		25
Baywood MHP	MH Park - Leased Spaces	URM6	23.4	1599 M/H PK+99 SP	47		47
Birch Bay Retirement Park	MH Park - Leased Spaces	UR4	3.9	1518 M/H PK 18 Sp	17		17
Birch Bay Trailer Court	MH Park - Leased Spaces	RC	33.9	1152 M/H IO-inPK	151	18	133
Britton Rd. MH Court	MH Park - Leased Spaces	UR	4.8	1500 M/H PK	4		4
Calmore Cove MHP	MH Park - Leased Spaces	RR2/R2A	15.8	1545 M/H PK 45 SP	41	5	36
Cedar Grove MHP	MH Park - Leased Spaces	R10A	26.3	1599 M/H PK+99 SP	105		105
Double L Ranch MHP	MH Park - Leased Spaces	R5A	15.3	1524 M/H PK 24 SP	24	2	22
Edgewater Resourt MHP	MH Park - Leased Spaces	RC	4.8	1547 M/H PK 47 SP	25	12	13
Evergreen Manor MHP	MH Park - Leased Spaces	R5A	19.6	1560 M/H PK 60 SP	43		43
Evergreen Retreat MHP	MH Park - Leased Spaces	R10A	1.5	1516 M/H PK 16 SP	16		16
Fairfield Mobile Court	MH Park - Leased Spaces	UR4	10.2	1526 M/H PK 26 SP	17		17
Forest Park MHP	MH Park - Leased Spaces	URMX6-12	5.6	1553 M/H PK 53 SP	50		50
Gulfside MHP	MH Park - Leased Spaces	RR1	1.0	1505 M/H PK 5 SP	4		4
Harborview MHP	MH Park - Leased Spaces	R5A	19.9	1516 M/H PK 16 SP	15		15
Hartvig MHP	MH Park - Leased Spaces	UR4	6.1	1508 M/H PK 8 SP	7		7
Hidden Valley MHP	MH Park - Leased Spaces	R5A	1.3	1508 M/H PK 8 SP	6	4	2
Hidden Village Estates	MH Park - Leased Spaces	R2A	14.6	1599 M/H PK+99 SP	12	2	10
Hilltop Haven MHP	MH Park - Leased Spaces	URM6-12/R10A	8.5	1525 M/N PK 25 SP	25		25
Lake Terrell Mobile Ranch	MH Park - Leased Spaces	R5A	5.0	1516 M/H PK 16 SP	7		7
Larsens Mobile Manor	MH Park - Leased Spaces	RR2A	9.3	1555 M/H PK 55 SP	55		55
Mantheys MHP	MH Park - Leased Spaces	R10A	23.2	1557 M/H PK 57 SP	57		57
Maple Leaf Court	MH Park - Leased Spaces	R10A	9.6	1522 M/H PK 22 SP	22		22
Maplewood Meadows	MH Park - Leased Spaces	R5A	20.4	1520 M/H PK 20 SP	19		19
Marine Dr. MHP	MH Park - Leased Spaces	RR2A	4.3	1511 M/H PK 11 SP	10		10
Mobile Home Manor	MH Park - Leased Spaces	AG	1.3	1511 M/H PK 11 SP	11		11
Mt. Baker MHP	MH Park - Leased Spaces	R5A	8.5	1530 M/H PK 30 SP	20		20
Nooksack Valley MHP	MH Park - Leased Spaces	AG	1.7	1507 M/H PK 7 SP	7		7
NW Mobile Park	MH Park - Leased Spaces	AG	11.8	1526 M/H PK 26 SP	27		27

Plaza Park	MH Park - Leased Spaces	R5A	14.1	1591 M/H PK 91 SP	27	2	25
Royal Coachman Mobile Estates	MH Park - Leased Spaces	R5A	9.9	1528 M/H PK 28 SP	28		28
See Haven MHP	MH Park - Leased Spaces	UR4	1.3	1512 M/H PK 12 SP	9		9
Sumas MHP	MH Park - Leased Spaces	AG	2.1	1508 M/H PK 8 SP	8		8
Sunny Point Trailer Park	MH Park - Leased Spaces	STC	4.2	1508 M/H PK 8 SP	2		2
Gulf Aire Condo	MH Park - Owned Spaces	TZ		1417 M/H IN CONDO PP	16		16
Lake Samish Terrace	MH Park - Owned Spaces	RR2		1417 M/H IN CONDO PP	53		53
Latitude 49 Resort Park Condo	MH Park - Owned Spaces	RC		1418 PRK MOD IN CONDO RP	315	315	0
Smallwood Shores Condo	MH Park - Owned Spaces	R5A		1416 M/H IN CONDO RP	10		10
Wildwood Resort Condo	MH Park - Owned Spaces	R5A		1418 PRK MOD IN CONDO RP	84	84	0
Beachwood Resort	RV Park	URM6	76.6	7516 RV PARKS	326	326	
Birch Bay Leisure Park	RV Park	URM6	81.1	7816 RV PARKS	603	603	
Black Mt. Ranch	RV Park	R5A	171.7	7499 OTHER RECREAT	315	315	
North Bay Park	RV Park	URM6	2.5	7516 RV PARKS	33	33	
Richmond Resort	RV Park	RC	1.4	7516 RV Parks	10	10	
Sea Breeze RV Park (PM within RV Park)	RV Park	RC	7.9	1155 PM IO-in PK	4	4	
Whatcom Meadows	RV Park	R5A	159.1	7519 OTHER RESORTS	146	146	
Total					2858	1881	977

Table 4. Locations of Mobile Home and RV Parks in Whatcom County



## Whatcom County

### Legend

■ Mobile Home Park

June 2021

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT: Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

0 0.75 1.5 3 4.5 6 Miles



## **V. Draft Findings of Fact and Reasons for Action**

Staff recommends the Council adopt the following findings of fact and reasons for action:

1. The County Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.
2. Additionally, Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options.
3. PDS submitted an application (PLN2021-00012) to make amendments to Whatcom County's zoning regulations (WCC Title 20) to provide these affordable housing options.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 20, 2021.
5. Notice of the subject amendments was submitted to the Washington State Department of Commerce on May 20, 2021, for their 60-day review.
6. On June 24, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed amendments.
7. The County Council held a duly noticed public hearing on the proposed amendments on October 29, 2021, and reviewed and considered the Planning Commission recommendation, staff recommendations, and public comments on the proposed amendments.
8. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
9. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

## **VI. Proposed Conclusions**

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VII. Recommendations**

1. Planning and Development Services recommends that the Council adopts the proposed regulations shown in Exhibit A.
2. The Planning Commission voted 7-0 to recommend approval of the proposed amendments to the County Council.

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING TO PROVIDE ADDITIONAL AFFORDABLE HOUSING OPTIONS, INCLUDING ALLOWING AND REGULATING TINY HOMES AND ALLOWING DUPLEXES IN PLANNED UNIT DEVELOPMENTS**

**WHEREAS,** The County Council is interested in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.

**WHEREAS,** Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options; and,

**WHEREAS,** The Whatcom County Council reviewed and considered Planning Commission recommendations, staff recommendations, and public comments on the proposed amendments; and

**WHEREAS,** The County Council hereby adopts the following findings of fact:

**FINDINGS OF FACT**

1. The County Council has expressed interest in increasing affordable housing options, in particular by amending the Whatcom County Code to allow for the siting of tiny homes.
2. Additionally, Planning and Development Services (PDS) has identified that in addition to allowing single- and multi-family dwellings in Planned Unit Developments, allowing duplexes would also increase affordable housing options.
3. PDS submitted an application (PLN2021-00012) to make amendments to Whatcom County's zoning regulations (WCC Title 20) to provide these affordable housing options.
4. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 20, 2021.
5. Notice of the subject amendments was submitted to the Washington State Department of Commerce on May 20, 2021, for their 60-day review.
6. On June 24, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed amendments.
7. The County Council held a duly noticed public hearing on the proposed amendments on October 23, 2021, and reviewed and considered the Planning Commission recommendation, staff recommendations, and public comments on the proposed amendments.
8. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements.
9. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.

**CONCLUSIONS**

1. The amendments to the development regulations are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

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

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED as to form:

( ) Approved      ( ) Denied

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, Executive

Date: \_\_\_\_\_

# Exhibit A: Proposed Amendments to the Whatcom County Code to Allow and Regulate Tiny Homes & to Allow Duplexes in Planned Unit Developments

## Regarding Tiny Homes:

### TITLE 20 ZONING

#### Chapter 20.80 Supplementary Requirements

##### **20.80.950 Mobile Home (including Manufactured Tiny Home) and Recreational Vehicle Park Standards.**

All mobile home ~~and recreational vehicle~~ parks shall meet the following standards:

- (1) Mobile home parks shall be developed through either a Binding Site Plan pursuant to WCC Title 21 (Land Division) or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). In either case:
  - (a) An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.
  - ~~(a)~~(b) A declaration of covenants addressing and ensuring long-term compliance with the appropriate requirements herein shall be submitted for review and approval.
  - (c) Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
- (2) Where not specified by the applicable zoning district, mobile home parks shall have:
  - (a) A maximum density of ~~seven~~ 7 lease spaces per acre when public water and sewer are provided;
  - (b) A maximum density of ~~three~~ 3 lease spaces per acre when public water and sewer are not provided;
  - (c) A minimum parcel size of ~~two~~ 2 acres.
- ~~(3) Where not specified by the applicable zoning district, recreational vehicle parks shall have:~~
  - ~~(a) A maximum density of 15 lease spaces per acre when public water and sewer are provided;~~
  - ~~(b) A maximum density of seven lease spaces per acre when public water and sewer are not provided;~~
  - ~~(c) A minimum parcel size of two acres.~~
- ~~(4)~~(3) Mobile home parks shall provide storage area for boats, recreational vehicles, and other large items. Recreational vehicle parks may provide such storage areas. Said storage areas shall be screened consistent with these standards.
- ~~(5)~~(4) Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property. Within a mobile home park, no mobile home, other major structure, or outdoor storage shall be located closer than 20 feet to the perimeter of the site.

**Comment [CES1]:** Mobile home and RV park standards have been separated into 2 sections, with the appropriate existing & new rules placed into each

**Comment [CES2]:** A requirement of ESSB 5383 for tiny home parks (and it should be for mobile home parks).

~~(6)~~(5) Along the edges of mobile home parks, walls or vegetative screening shall be provided where needed to protect residents from undesirable views, lighting, noise, or other off-site influences, or to protect occupants of adjoining property from potentially adverse influences within the mobile home park. In particular, extensive off-street parking areas and service areas for loading and unloading other than passenger vehicles, and for storage and collection of trash and garbage, shall be screened.

~~(7)~~ A 30-foot landscaped buffer area or screening composed of suitable native vegetation shall be placed around all common storage areas and at all perimeters of any recreational vehicle park. The purpose of said buffer is to protect on a year-round basis the adjacent property or roadways from unsightliness, visual distraction and/or noise impacts. The buffer area may be reduced where it can be demonstrated that alternative screening can adequately accomplish the purposes stated in this subsection. Perimeter buffers shall be supplemented by a fence or other device where trespass is a potential problem. No structures, development or other activities shall occur within any buffer areas; provided, that trails may be located within those buffer areas which are at least 50 feet in width.

~~(8)~~(6) There shall be landscaping developed consistent with WCC 20.80.300 ([Landscaping](#)) within open areas of ~~the mobile home park and recreational vehicle~~ parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.

~~(9)~~(7) Mobile homes ~~and recreational vehicle~~ parks shall keep 40% ~~percent~~ of the site free of buildings, structures, parking areas, and other impervious surfaces.

~~(10)~~ An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.

~~(11)~~(8) On-site recreational amenities with at least one substantial facility serving the users of a park or identified area shall be provided. Such substantial facilities may include tennis courts, children's play areas with equipment, or a swimming pool. The type and size of facility shall be appropriate to the type and amount of clientele being served.

~~(12)~~ Maximum length of stay in recreational vehicle parks shall not exceed 180 days for any one-year time period.

~~(13)~~(9) Interior roads within mobile home ~~and recreational vehicle~~ parks shall be private, unless the County Engineer determines that the development of public roads is necessary.

~~(14)~~(10) For each mobile home space there shall be provided and maintained at least two parking spaces conforming ~~with to zoning ordinance~~ the requirements of WCC 20.80.500, et seq. ([Off-Street Parking and Loading Requirements](#)). In addition to occupant parking, guest and service parking shall be provided within the boundaries of the park at a ratio of one parking space for each two mobile home spaces.

~~(15)~~(11) There shall be a minimum of 10 feet of separation maintained between all mobile homes on the site. Accessory structures may be located no closer than 10 feet to any mobile home or five feet to other accessory structures.

~~(12)~~ Each rental space shall be numbered on the site plan and the number shall be prominently displayed on the site. All mobile home parks shall comply with WCC Chapter 24.04 ([Recreational Vehicle Park and Subdivision Rules](#)) regarding utility provision. Utility (wastewater, water, electricity) hook-ups shall be provided for each rentable or leasable space.

Comment [CES3]: Moved above

#### **20.80.955 Recreational Vehicle (including Tiny Homes on Wheels) Park Standards.**

All recreational vehicle parks shall meet the following standards:

- (1) Recreational vehicle parks shall be developed through either a Binding Site Plan pursuant to WCC Title 21 (Land Division) or by condominium pursuant to Chapter 64.34 RCW (Condominium Act). In either case:
  - (a) An organization or individual with proper funding to maintain common facilities and operate the parks shall be provided.
  - (b) A declaration of covenants addressing and ensuring long-term compliance with the appropriate requirements herein shall be submitted for review and approval.
  - (c) Each rental or lease space shall be numbered on the site plan and the number shall be prominently displayed on the site.
- (2) Where not specified by the applicable zoning district, recreational vehicle parks shall have:
  - (a) A maximum density of 15 lease spaces per acre when public water and sewer are provided;
  - (b) A maximum density of 7 lease spaces per acre when public water and sewer are not provided;
  - (c) A minimum parcel size of 2 acres.
- (3) Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property.
- (4) A 30-foot landscaped buffer area or screening composed of suitable native vegetation shall be placed around all common storage areas and at all perimeters of any recreational vehicle park. The purpose of said buffer is to protect on a year-round basis the adjacent property or roadways from unsightliness, visual distraction, and/or noise impacts. The buffer area may be reduced where it can be demonstrated that alternative screening can adequately accomplish the purposes stated in this subsection. Perimeter buffers shall be supplemented by a fence or other device where trespass is a potential problem. No structures, development, or other activities shall occur within any buffer areas; provided, that trails that are at least 5 feet in width may be located within those buffer areas.
- (5) There shall be landscaping developed consistent with WCC 20.80.300 (Landscaping) within open areas of recreational vehicle parks not otherwise used for park purposes. Such open areas and landscaping shall be continually and properly maintained.
- (6) Recreational vehicle parks shall keep 40% of the site free of buildings, structures, parking areas, and other impervious surfaces.
- (7) On-site recreational amenities with at least one substantial facility serving the users of a park or identified area shall be provided. Such substantial facilities may include tennis courts, children's play areas with equipment, or a swimming pool. The type and size of facility shall be appropriate to the type and amount of clientele being served.
- (8) Maximum length of stay in recreational vehicle parks shall not exceed 180 days for any one-year time period.
- (9) Interior roads within recreational vehicle parks shall be private, unless the County Engineer determines that the development of public roads is necessary.
- (10) All recreational vehicle parks shall comply with WCC Chapter 24.04 (Recreational Vehicle Park and Subdivision Rules) regarding utility provision. Utility (wastewater, water, electricity) hook-ups shall be provided for each rentable or leasable space designated for park model trailers and Type 1

**Comment [CES4]:** A requirement of ESSB 5383 for tiny home parks.

**Comment [CES5]:** Moved from 20.97.340 (definition of RV Park), as these are regulations, not definitions.

**Comment [CES6]:** A requirement of ESSB 5383 for tiny home parks.

THOWs. Spaces designated solely for self-contained recreational vehicles may use communal facilities.

## Chapter 20.97 Definitions

### 20.97.250 Mobile Home (a.k.a, Manufactured Home).

“Mobile home” means a dwelling unit designed for long-term human habitation by one family and having complete living facilities; constructed and fabricated into a complete unit at a factory and capable of being transported to a location of use on its own chassis and wheels; identified by a model number and serial number by its manufacturer; and designed primarily for placement on an impermanent footing. This includes manufactured tiny homes (see “Tiny Home.”) A unit ~~which that~~ was originally built as a mobile home but ~~which~~ has substantially lost its mobility ~~through by~~ being placed on a permanent footing, the tongue and axle removed, skirting is installed, and ~~which that~~ wholly meets state standards for such units, shall not be considered to be a mobile home and shall be treated as a single-family dwelling for the purpose of this ~~ordinance code only when it is fixed to a permanent footing and tongue and axle have been removed and skirting installed.~~

### 20.97.255 Mobile Home Park.

“Mobile home park” means any parcel or adjacent parcels of land in the same ownership ~~which that~~ is ~~utilized~~ used for occupancy by more than two mobile homes. This term shall not be construed to mean campgrounds, recreational vehicle parks, or tourist facilities for camping.

### 20.97.292 Park Model Trailer.

“Park model trailer” means a trailer designed to provide seasonal or temporary living quarters; ~~which are not self-contained and thus may need to be used with~~ temporarily connected ~~editions~~ to utilities ~~necessary~~ for operation of installed fixtures and appliances; ~~it~~ has a gross trailer area not exceeding 400 square feet; ~~or and~~ is approved by the state as a park model trailer. This includes Type 1 THOWs (see “Tiny Home on Wheels”).

### 20.97.335 Recreational Vehicle.

“Recreational vehicle” means a motor vehicle; or portable structure capable of being transported on ~~the~~ highways by a motor vehicle; ~~that is~~ designed and intended for casual or short-term human occupancy for travel, recreational, and vacation uses without a permanent foundation; identified by a model number (RV), serial number, and vehicle registration number; and equipped with limited water storage and other self-contained living facilities. For the purposes of these regulations, the term “recreational vehicle” shall include self-contained campers, motor-homes, Type 2 Tiny Home on Wheels, and travel trailers, ~~and but~~ shall not include park model trailers or Type 1 Tiny Home on Wheels, as they are not self-contained units.

### 20.97.340 Recreational Vehicle Park.

“Recreational vehicle park” means a parcel of private land in which three or more contiguous sites are primarily for occupancy by recreational vehicles for travel, recreation, or vacation uses. ~~For~~ Within

mobile home parks, only spaces that are designated and/or are used for recreational vehicles shall constitute a recreational vehicle park. ~~Recreational vehicles set up for occupancy shall be at least 10 feet from each other and any structures on the property. Whether or not intended for occupancy, they shall be at least 10 feet from all structures not on the same property.~~ For the purposes of these regulations, the term “recreational vehicle park” shall include camping clubs.

**Comment [CES7]:** These are regulations, not definitions, and have been moved to 20.80.955.

#### **20.97.435.03 Tiny Home.**

~~A tiny home is a dwelling unit that is 400 square feet or less in floor area (excluding sleeping lofts). For the purposes of this code there are two types of tiny homes, as described below. For Tiny homes on Wheels see WCC 20.97.435.04.~~

**Comment [CM8]:** This portion matches the definition in appendix Q in the IRC. The size is also consistent with the definition of a park model in WAC 296-150P-00200.

- ~~1. *Site-Built Tiny Home.* A tiny home built on-site on a permanent foundation that meets the minimum requirements of the International Residential Code (IRC), including provisions of Appendix Q, and is reviewed and inspected by Whatcom County. For the purposes of this code they are equivalent to and are permissible under the same rules as any standard single-family dwelling.~~
- ~~2. *Manufactured Tiny Home.* A factory-built tiny home bearing a certification tag from the Washington State Department of Labor and Industries (L&I) or other approved third party inspection agency stating it is approved for use as a single-family residence per the current edition of the International Residential Code (IRC) or Housing and Urban Development (HUD) requirements. Manufactured tiny homes usually have wheels and a chassis when they come out of the factory, and typically have the wheels removed prior to placing it on its manufacturer-approved foundation. For the purposes of this code they are equivalent to and are permissible under the same rules as any standard mobile home.~~

#### **20.97.435.04 Tiny Home on Wheels (THOWs)**

~~A Tiny Home on Wheels is a portable structure licensed to be transported on the highways by a motor vehicle; designed and intended for casual or short-term human occupancy for travel, recreational, vacation and other temporary uses without a permanent foundation; in a space of 400 square feet or less in floor area (excluding sleeping lofts). For the purposes of this code there are two types of tiny homes on wheels, as described below.~~

- ~~1. *“Type 1 THOW”* is a THOW that is not self-contained, and thus needs to be temporarily connected to utilities necessary for operation of installed fixtures and appliances. For the purposes of this code they are equivalent to and are permissible under the same rules as for Park Model Trailers.~~
- ~~2. *“Type 2 THOW”* is a THOW that is self-contained and may use communal utility services (water, wastewater). For the purposes of this code they are equivalent to and are permissible under the same rules as for Recreational Vehicles (RVs).~~

## Regarding Duplexes in Urban Zones via Planned Unit Developments:

### Title 20 ZONING

#### Chapter 20.85 Planned Unit Developments (PUD)

##### 20.85.050 Permitted Uses.

**.051** Uses ~~outright permitted-allowed~~ in a planned unit development shall include those permitted, accessory, and conditional uses allowed in the underlying zone district(s), ~~as well as and~~ such other uses as provided in WCC 20.85.052 ~~to through~~ 20.85.055. For areas located within a Water Resource Protection Overlay District, the more restrictive use provisions of Chapter 20.71 WCC shall apply.

**.052** In addition to the uses allowed in the underlying zone, the following uses shall be allowed outright ~~where when~~ they are only serving the planned unit development and ~~where~~ all other applicable standards are met:

- (1) Community buildings;
- (2) Indoor recreation facilities, including athletic clubs or fitness centers, racquetball courts, swimming pools, tennis courts, or other similar uses;
- (3) Outdoor recreation facilities, including swimming pools, tennis courts, recreational trails, or similar use; and
- (4) Recreational vehicle storage areas.

**.053** ~~Even though they may not be allowed in the underlying zone(s).~~ A planned unit development may also authorize add the following additional land uses ~~activities, as follows;~~ provided the criteria of WCC 20.85.054 are met:

- (1) ~~For In~~ the Urban Residential and Rural zones, duplexes and multifamily dwellings consistent with the density requirements of the underlying zone, except as that may be modified by the provisions of WCC 20.85.108 (Density Increases). The number of units attached may be greater than would otherwise be allowed by the underlying zoning.
- (2) ~~In For~~ the Urban Residential and Urban Residential Medium zones, duplexes and those uses allowed in the Neighborhood Commercial zone ~~are may~~ also be permitted. In addition, both resort- and non-resort-oriented transient accommodations, such as inns or hotels, may be permitted; provided, that:
  - (a) The total number of sleeping units shall not exceed 50%-percent of the total number of dwelling units that would be allowed on the property by the underlying zone regulations;
  - (b) Each sleeping unit shall count as one dwelling unit for the purpose of determining the total number of dwelling and sleeping units, in combination, permitted on the property;
  - (c) It can be demonstrated that the overall development will not generate more traffic than conventional residential development at the density allowed in the zone.
- (3) ~~In For~~ the General Commercial zone, those uses allowed in the Urban Residential Medium zone are ~~appropriate~~ allowed.
- (4) ~~In For~~ the Resort Commercial zone:

Comment [CES9]: Policy change

Comment [CES10]: Policy change

- (a) Multiple single-family dwellings per lot are permitted if developed as condominiums under state law; and
- (b) Single-family attached dwellings (at a base gross density of ~~seven-7~~ units/acre); ~~and~~.
- (5) ~~In For~~ the Light Impact Industrial zone, those uses allowed in the Urban Residential Medium, Neighborhood Commercial, ~~and/or~~ General Commercial zones are ~~appropriate~~ allowed.

**.054** In order ~~to expand for those additional~~ uses listed ~~allowed~~ in WCC 20.85.053 to be authorized, the applicant ~~shall~~ must demonstrate:

- (1) That the primary land use activity of the planned unit development ~~shall be those uses~~ is one allowed by the underlying zone district;
- (2) That the ~~expanded~~ additional uses will benefit and serve the residents or employees of the proposed planned unit development; and
- (3) That all other applicable approval criteria and standards are met.

**.055** Where a proposed development is located in two or more zone districts, the uses allowed in the applicable districts may be located on any portion of the site; provided, that all applicable standards are met.

**.056** For purposes of determining appropriate standards, the requirements of the zone district allowing the use would apply. If the use is allowed by two or more districts, the lesser standards would apply.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-609

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File ID:	AB2021-609	Version:	1	Status:	Agenda Ready
File Created:	10/19/2021	Entered by:			
Department:		File Type:	Ordinance		
Assigned to:	Council			Final Action:	
Agenda Date:	10/26/2021			Enactment #:	

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Primary Contact Email: [chalka@co.whatcom.us](mailto:chalka@co.whatcom.us)

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

Ordinance amending Whatcom County Code Title 3 (Revenue and Finance), specifically Chapters 3.06 (Grants) and 3.08 (Purchasing System)

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

Ordinance amending Whatcom County Code Title 3 (Revenue and Finance), specifically Chapters 3.06 (Grants) and 3.08 (Purchasing System) to incorporate new state legislation, remove the sunset clause, and revise parameters for council approval

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Proposed Ordinance, Proposed Ordinance - tracked changes

PROPOSED BY: BROWNE

INTRODUCED: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE TITLE 3 REVENUE AND FINANCE,  
SPECIFICALLY CHAPTERS 3.06 (GRANTS) AND 3.08 (PURCHASING SYSTEM)  
TO INCORPORATE NEW STATE LEGISLATION, REMOVE SUNSET CLAUSE,  
AND REVISE PARAMETERS FOR COUNCIL APPROVAL**

**WHEREAS**, Whatcom County residents entrust the County Council and Executive to procure goods responsibly, efficiently, and with transparency; and

**WHEREAS**, Whatcom County Council wishes to revise the purchasing code to provide greater transparency for the public while allowing for efficient purchasing processes; and

**WHEREAS**, Whatcom County Council adopted Ordinance 2014-047 setting forth requirements for grant application approvals in Chapter 3.06; and

**WHEREAS**, Whatcom County Council adopted Ordinance 2016-032 to achieve greater administrative efficiencies through clarifying purchasing processes and delivering timely and complete procurement information; and

**WHEREAS**, Whatcom County Council adopted Ordinance 2018-033 to extend the sunset clause date to December 31, 2021; and

**WHEREAS**, Whatcom County Council wishes to update the purchasing code to include new purchasing guidance from state law regarding advertisement requirements; and

**WHEREAS**, Whatcom County Council experienced results from revised approval thresholds and wants to make additional revisions and remove the sunset clause.

**NOW, THEREFORE, BE IT ORDAINED**, that the Whatcom County Code Chapters 3.06 and 3.08 shall hereby be amended as detailed in the attached 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**

\_\_\_\_\_  
Karen Frakes (by email 10/19/2021)  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

( ) Approved ( ) Denied

Date Signed: \_\_\_\_\_

## EXHIBIT A

### Chapter 3.06

#### GRANTS

Sections:

3.06.010 Approval by council

3.06.010 Approval by council.

A. All grants that propose county direct cost sharing in an amount exceeding \$20,000, or require additional personnel, must be approved by the council.

B. All Grants exceeding \$40,000 must be approved by the County Council.

C. All grants that have provisions other than compliance with state and federal regulations and funding and reporting on existing county programs must be approved by the council.

D. The requirements of this section shall not apply to emergencies declared by the county executive. (Ord. 2014-047 Exh. A; Ord. 84-109).

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### Chapter 3.08

#### PURCHASING SYSTEM

Sections:

3.08.010 Purpose.

3.08.020 Administration.

3.08.030 Authority and functions.

3.08.040 Price quotations.

3.08.050 Vendor lists.

3.08.060 Bids and proposals required.

3.08.070 Contractor's bond required for public works.

3.08.080 Labor and material claims.

3.08.090 Bid specifications, deposits and awards.

3.08.095 Small works roster contract award process.

3.08.100 Council approval required.

3.08.110 Unregistered or unlicensed contractors prohibited.

3.08.120 Joint purchasing.

3.08.125 Nondiscrimination.

3.08.130 Amendments to chapter.

3.08.140 Severability.

3.08.010 Purpose.

It shall be the purpose of this chapter to establish a purchasing system to work with all county departments, agencies, boards and commissions, and other operations of the county to ensure efficiency in procurement of supplies and equipment of the necessary quality at the lowest possible cost; to ensure compliance with purchasing statutes, regulations, policies and procedures; to ensure efficient utilization of county property, new and used; and to minimize employee time devoted to purchasing functions.

In addition, it is intended that the purchasing system be as transparent as possible, deliver timely and complete procurement information to prospective vendors, and report successful

1 bids, contracts and project expenditures to the public using the county's website. (Ord.  
2 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord.  
3 93-042 Exh. H).

4  
5 3.08.020 Administration.

6 The director of the administrative services department shall have full authority and  
7 responsibility for the operation and ongoing improvement of the purchasing system under  
8 the direction of the county executive. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord.  
9 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

10  
11 3.08.030 Authority and functions.

12 A. The authority to recommend and implement administrative policies and procedures that  
13 provide a comprehensive basis for purchasing functions shall fall under the purview of the  
14 purchasing system.

15  
16 B. The following responsibilities shall be coordinated through the purchasing system:

17  
18 1. Continue to improve services to departments and agencies in the area of purchasing.

19  
20 2. Develop automated requisition and reporting systems.

21  
22 3. Improve purchasing productivity and control for all departments.

23  
24 4. Standardize high volume purchases.

25  
26 5. Develop efficient policies and procedures for acquiring goods and services.

27  
28 6. Implement inventory controls and minimize costs of goods and services.

29  
30 7. Prepare and make available to all departments standardized forms for requisitions,  
31 vouchers, inventories and any other form required for county operations.

32  
33 8. Assign purchase order numbers for the acquisition of supplies, materials, equipment,  
34 tools, services, rental of personal property, professional services and contracted public  
35 works exceeding \$2,500.

36  
37 9. Maintain vendor list pursuant to RCW 39.04.190.

38  
39 10. Whenever practically possible, contact at least three vendors to assure competitive  
40 pricing.

41  
42 11. Promote a competitive procurement environment by actively soliciting subscribers to the  
43 county's web-based purchasing notification system.

44  
45 12. Review and approve bid specifications and prepare invitations to bid pursuant to  
46 provisions set forth in this chapter.

47  
48 13. Check bids for accuracy and compliance with specifications and invitation to bid.

49  
50 14. Make bid recommendations on all awards to the county executive.

51  
52 15. Perform such other duties as may be required to further the purposes of this chapter.  
53 (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A;  
54 Ord. 93-042 Exh. H).

1  
2 3.08.040 Price quotations.

3 Whenever practically possible, price quotations from at least three vendors shall be solicited  
4 for contracted work constituting a public work and the acquisition of materials, supplies,  
5 services, tools, equipment or rental of personal property involving amounts greater than  
6 \$10,000 not exceeding \$40,000. Quotations for architects and engineers are subject to the  
7 requirements of Chapter 39.80 RCW. Records of all quotations obtained shall be maintained  
8 and shall be open to public inspection. Bids submitted periodically for the roster of rental  
9 equipment with operators may be used as the source of quotations for public works projects  
10 not exceeding \$40,000. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.  
11 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

12  
13 3.08.050 Vendor lists.

14 Whatcom County will maintain a vendor list pursuant to RCW 39.04.190. (Ord. 2016-032  
15 Exh. A; Ord. 2013-029 Exh. A).

16  
17 3.08.060 Bids and proposals required.

18 Awards of contracts for the acquisition of materials, supplies, services, tools, equipment or  
19 rental of personal property and professional services exceeding \$40,000 will be based upon  
20 bids or proposals received in response to specifications and invitations to bid, except as  
21 follows:

22  
23 A. Sole source purchases shall not be required to go through competitive bidding. A  
24 purchase may be determined to be sole source by the county executive or designee when  
25 the bidding process would be futile because only one bidder could respond to the invitation.

26  
27 B. In the event of an emergency when the public interest or property of the county would  
28 suffer material injury or damage by delay, upon an order of the county executive declaring  
29 the existence of such emergency and reciting the facts constituting same, the requirements  
30 governing competitive bids with reference to any purchase or contract may be waived  
31 pursuant to RCW 36.32.270.

32  
33 C. Public works projects involving funds not exceeding the amount allowed in RCW  
34 39.04.155, Small works roster contract procedures – Limited public works process, or any  
35 successor statute, may be completed utilizing the small works roster contract award  
36 process.

37  
38 D. Acquisition is from another public entity.

39  
40 E. Contract does not require use of county funds.

41  
42 Proposals from architects and engineers are subject to the requirements of Chapter 39.80  
43 RCW. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034  
44 Exh. A; Ord. 93-042 Exh. H).

45  
46 3.08.070 Contractor's bond required for public works.

47 Whatcom County shall comply with the requirements of RCW 39.08.010. (Ord. 2016-032  
48 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042  
49 Exh. H).

50  
51 3.08.080 Labor and material claims.

52 Labor and material claims shall be filed pursuant to RCW 39.08.030. (Ord. 2016-032 Exh.  
53 A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

3.08.090 Bid specifications, deposits and awards.

A. In developing specifications for bids or proposals, all reasonable efforts shall be made to ensure a competitive process and that a variety of vendors shall be capable of fulfilling the stated requirements of the county. Performance considerations shall be included in the specifications. However, nothing in this section shall be construed to limit the county from pursuing sole source procurement where adequate justification has been presented that such procurement is in the best interests of county operations.

B. When the acquisition of materials, supplies, purchased services, tools, equipment, rental of personal property or professional services involves amounts greater than \$40,000 for a nonpublic work or public work award, the administrative services department shall be responsible for the review and approval of specifications and the preparation of invitations to bid pursuant to provisions set forth in this chapter.

C. All bid specifications shall be in writing and placed on file for public inspection.

D. All invitations for bids, requests for proposals, requests for qualifications and bid packets will be posted on the county's website. Project announcements and bid solicitations or proposals shall be published in the official county newspaper, and when in the county's best interest, other regional publications. Additionally, the county will offer complimentary bid packets to multiple northwest and national plan centers. Advertisements shall be published at least once at least 13 days prior to the last date upon which bids will be received. Such advertisement shall state:

1. The date after which bids will not be received;
2. The character of the work to be done, or the materials, equipment or service to be purchased; and
3. Instruction on how to obtain additional information, including the complete bid packet.

E. No bid shall be considered for public works unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

F. Should the bidder to whom the contract is awarded fail to enter into the contract or fail to furnish the contractor's bond within 10 days (exclusive of the date of notice) after notice of the award, the amount of the bid deposit shall be forfeited to the county. Thereafter, the award shall be made to the next lowest responsive bidder. The bid deposit of an unsuccessful bidder (if his bid deposit has not been forfeited) shall be returned after the required contractor's bond of the successful bidder has been accepted.

G. Bids received shall be opened and read in public on the date named in the advertisement for bids, or on a subsequent date established in a bid addendum.

H. After opening, all bids shall be reviewed and referred to the requisitioning department for recommendation of award. Bids will be forwarded by the director of the administrative services department or designee with a recommendation to the county executive for award.

I. After opening and award, all bids shall be filed for public inspection, and available by telephone inquiry.

J. Any or all bids may be rejected for good cause. If all bids are not rejected, the award shall be to the lowest responsive bidder. In determining which is the lowest responsive

bidder, the county may take into consideration the bidder's responsiveness to the county's requirements, the quality of the articles to be purchased or leased, availability of parts and service, delivery time, the tax revenue the county would receive from purchasing from a supplier located within its boundaries and prior dealings with the bidder.

K. The county may issue requests for proposals for services, or for technologically complex equipment including but not limited to computers, software, or telephone systems. If all proposals are not rejected, the award shall be to the highest rated proposal, taking into account the selection criteria published in the request for proposals.

L. The county may award to multiple bidders for the same commodity or service when the bid specifications provide for special circumstances in the determination of which vendor is truly the lowest price to the county. Special circumstances may include differences in ability to deliver, delivery time, availability of material, special loading or unloading conditions, total cost including transport or labor if not included with bid item, performance of the delivered material, location of the source, and proximity to the delivery point.

M. Contracts that require county council approval per WCC 3.08.100 may be administratively amended to a cumulative amount not to exceed \$10,000 or 10 percent of contract amount, whichever is greater; larger amounts require council approval. No administrative contract amendment may exceed authorized expenditure authority. (Ord. 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

#### 3.08.095 Small works roster contract award process.

This section may be utilized in the acquisition of contractual services necessary to complete public works projects as allowed under RCW 36.32.250, and consistent with RCW 39.04.155. In order to use a small works roster contract award process in lieu of formal sealed bidding, the county shall:

A. Publish at least twice each year in the official county newspaper a notice of the existence of the roster and solicit the names of contractors that are qualified for the requested categories of work. Notice shall be published at least once in each week for two consecutive weeks prior to the last date upon which response to the notice will be received, and may be published for as many additional publications as shall be considered in the county's interest.

B. In every case a certain category of work is to be accomplished under this section, all contractors responding to the above notice and indicating their qualification to perform the category of work proposed shall be contacted and provided an invitation to bid.

C. Include in the invitation to bid the date on which bids will be received, the scope and nature of work to be performed, the materials and equipment to be furnished, and, if not provided otherwise in the invitation to bid, where the detailed plans and specifications may be seen and obtained.

D. Otherwise apply the provisions of WCC 3.08.090(B), (E), (F), (G), (H), (I), (J), and (M).

E. Forgo the advertisement of a contract awarded through use of the small works roster. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A).

#### 3.08.100 Council approval required.

County council approval is required for the following:

A. Contracts or bid awards exceeding \$40,000 and all real property leases, except when:

- 1
- 2 1. Exercising an option contained in a contract or lease previously approved by the council.
- 3
- 4 2. Contract is for the design, construction, right-of-way acquisition, professional services, or
- 5 other capital costs approved by the county council in a capital budget appropriation
- 6 ordinance.
- 7
- 8 3. Contract or bid award is for supplies or for equipment approved in a capital budget
- 9 appropriation ordinance.
- 10
- 11 4. Contract is for technical support and software maintenance from the developer of
- 12 proprietary software which is currently being used by Whatcom County.
- 13
- 14 5. Contract is for manufacturer's technical support and hardware maintenance of electronic
- 15 systems.
- 16
- 17 6. Pursuant to and within the scope of a declaration of emergency made by the county
- 18 executive under WCC 3.08.060(B). The county executive, pursuant to a declaration of
- 19 emergency, shall submit the contract to the county council for informational purposes at the
- 20 council's next regular or special meeting.
- 21
- 22 B. All informational materials distributed to more than 20 percent of county residences for
- 23 the purpose of informing or educating the public on a specific capital project, levy or tax.
- 24 (Ord. 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.
- 25 A; Ord. 2000-025; Ord. 97-034 Exh. A; Ord. 96-034; Ord. 93-042 Exh. H).
- 26
- 27 3.08.110 Unregistered or unlicensed contractors prohibited.
- 28 No contract shall be entered into or executed with any contractor who is not registered or
- 29 licensed as required by the laws of this state (except only as permitted under RCW
- 30 39.06.010 for highway projects for contractors who have been prequalified as required
- 31 under RCW 47.28.070). (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.
- 32 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).
- 33
- 34 3.08.120 Joint purchasing.
- 35 The county may enter into agreements with the state or with any agency, political
- 36 subdivision, or unit of local government to purchase goods or services cooperatively. Joint
- 37 purchasing services are hereby authorized and encouraged with any other municipal
- 38 corporation in Whatcom County. Assistance to the participating municipal corporation may
- 39 be given in any way except that a sale or contract shall be between the vendor and the
- 40 participating municipal corporation and not Whatcom County. Bids and quotes may be
- 41 obtained jointly based on volume if it is in the county's best interest to do so. (Ord. 2016-
- 42 032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-
- 43 042 Exh. H).
- 44
- 45 3.08.125 Nondiscrimination.
- 46 Whatcom County endeavors to secure for all individuals within the county the freedom from
- 47 discrimination because of race, color, religion, national origin, gender, sexual orientation
- 48 (including gender identity), age, marital status, or disability in connection with employment,
- 49 and thereby to promote the interests, rights and privileges of individuals within the county.
- 50
- 51 A. All contracts proposed by county staff shall incorporate equal employment opportunity
- 52 clauses which shall read as follows, or as subsequently amended to be consistent with
- 53 existing law:
- 54

1 1. Nondiscrimination in Employment. The county's policy is to provide equal opportunity in  
2 all terms, conditions and privileges of employment for all qualified applicants and employees  
3 without regard to race, color, creed, religion, national origin, sex, sexual orientation  
4 (including gender identity), age, marital status, disability, or veteran status. The contractor  
5 shall comply with all laws prohibiting discrimination against any employee or applicant for  
6 employment on the grounds of race, color, creed, religion, national origin, sex, sexual  
7 orientation (including gender identity), age, marital status, disability, political affiliation, or  
8 veteran status, except where such constitutes a bona fide occupational qualification.  
9

10 Furthermore, in those cases in which the contractor is governed by such laws, the  
11 contractor shall take affirmative action to ensure that applicants are employed, and treated  
12 during employment, without regard to their race, color, creed, religion, national origin, sex,  
13 age, marital status, sexual orientation (including gender identity), disability, or veteran  
14 status, except where such constitutes a bona fide occupational qualification. Such action  
15 shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations,  
16 rate of pay or other forms of compensation benefits, selection for training including  
17 apprenticeship, and participation in recreational and educational activities. In all solicitations  
18 or advertisements for employees placed by them or on their behalf, the contractor shall  
19 state that all qualified applicants will receive consideration for employment without regard  
20 to race, color, religion, sex or national origin.  
21

22 The foregoing provisions shall also be binding upon any subcontractor; provided, that the  
23 foregoing provisions shall not apply to contracts or subcontractors for standard commercial  
24 supplies or raw materials, or to sole proprietorships with no employees.  
25

26 2. Nondiscrimination in Client Services. The contractor shall not discriminate on the grounds  
27 of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation  
28 (including gender identity), disability, or veteran status; or deny an individual or business  
29 any service or benefits under this agreement unless otherwise allowed by applicable law; or  
30 subject an individual or business to segregation or separate treatment in any manner  
31 related to his/her/its receipt any service or services or other benefits provided under this  
32 agreement unless otherwise allowed by applicable law; or deny an individual or business an  
33 opportunity to participate in any program provided by this agreement unless otherwise  
34 allowed by applicable law.  
35

36 B. Noncompliance with the nondiscrimination in employment and client services provisions  
37 will be grounds for terminating a contract and may hinder a contractor's eligibility for future  
38 contracts. (Ord. 2021-016 Exh. A).  
39

40 3.08.130 Amendments to chapter.

41 The county council reserves the exclusive right to alter, amend, rescind, abrogate, delete,  
42 supersede or replace the provisions of this chapter, or any part thereof, in any manner not  
43 inconsistent with state law. Whether or not the county council takes action, the provisions of  
44 this chapter shall be deemed automatically altered, amended, or superseded to conform to  
45 any mandatory state administrative ruling or statute, as of the effective date of any such  
46 enactment appertaining to the matters covered in this chapter, to the effect that the  
47 provisions of this chapter shall at all times conform to, and never conflict with, said state  
48 laws and regulations. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;  
49 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).  
50

51 3.08.140 Severability.

52 If any provision of this chapter is held to be invalid, the remainder of the chapter shall  
53 remain in effect. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;  
54 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

PROPOSED BY: BROWNE  
INTRODUCED: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE TITLE 3 REVENUE AND FINANCE,  
SPECIFICALLY CHAPTERS 3.06 (GRANTS) AND 3.08 (PURCHASING SYSTEM)  
TO INCORPORATE NEW STATE LEGISLATION, REMOVE SUNSET CLAUSE,  
AND REVISE PARAMETERS FOR COUNCIL APPROVAL**

**WHEREAS,** Whatcom County residents entrust the County Council and Executive to procure goods responsibly, efficiently, and with transparency; and

**WHEREAS,** Whatcom County Council wishes to revise the purchasing code to provide greater transparency for the public while allowing for efficient purchasing processes; and

**WHEREAS,** Whatcom County Council adopted Ordinance 2014-047 setting forth requirements for grant application approvals in Chapter 3.06; and

**WHEREAS,** Whatcom County Council adopted Ordinance 2016-032 to achieve greater administrative efficiencies through clarifying purchasing processes and delivering timely and complete procurement information; and

**WHEREAS,** Whatcom County Council adopted Ordinance 2018-033 to extend the sunset clause date to December 31, 2021; and

**WHEREAS,** Whatcom County Council wishes to update the purchasing code to include new purchasing guidance from state law regarding advertisement requirements; and

**WHEREAS,** Whatcom County Council experienced results from revised approval thresholds and wants to make additional revisions and remove the sunset clause.

**NOW, THEREFORE, BE IT ORDAINED,** that the Whatcom County Code Chapters 3.06 and 3.08 shall hereby be amended as detailed in the attached 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**

\_\_\_\_\_  
Karen Frakes (by email 10/19/2021)  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

( ) Approved ( ) Denied

Date Signed: \_\_\_\_\_

## EXHIBIT A

### Chapter 3.06

#### GRANTS

Sections:

3.06.010 Approval by council ~~—Exemptions.~~

3.06.010 Approval by council ~~—Exemptions.~~

A. All ~~federal and/or state~~ grants that propose county direct cost sharing in an amount exceeding \$20,000, or require additional personnel, must be approved by the council ~~before the grant may be accepted.~~

B. All Grants exceeding \$40,000 must be approved by the County Council.

C. All grants that have provisions other than compliance with state and federal regulations and funding and reporting on existing county programs must be approved by the council.

DB. The requirements of this section shall not apply to emergencies declared by the county executive. (Ord. 2014-047 Exh. A; Ord. 84-109).

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### Chapter 3.08

#### PURCHASING SYSTEM

Sections:

3.08.010 Purpose.

3.08.020 Administration.

3.08.030 Authority and functions.

3.08.040 Price quotations.

3.08.050 Vendor lists.

3.08.060 Bids and proposals required.

3.08.070 Contractor's bond required for public works.

3.08.080 Labor and material claims.

3.08.090 Bid specifications, deposits and awards.

3.08.095 Small works roster contract award process.

3.08.100 Council approval required.

3.08.110 Unregistered or unlicensed contractors prohibited.

3.08.120 Joint purchasing.

3.08.125 Nondiscrimination.

3.08.130 Amendments to chapter.

~~3.08.135 Sunset provision.~~

3.08.140 Severability.

3.08.010 Purpose.

It shall be the purpose of this chapter to establish a purchasing system to work with all county departments, agencies, boards and commissions, and other operations of the county to ensure efficiency in procurement of supplies and equipment of the necessary quality at the lowest possible cost; to ensure compliance with purchasing statutes, regulations,

1 policies and procedures; to ensure efficient utilization of county property, new and used;  
2 and to minimize employee time devoted to purchasing functions.

3  
4 In addition, it is intended that the purchasing system be as transparent as possible, deliver  
5 timely and complete procurement information to prospective vendors, and report successful  
6 bids, contracts and project expenditures to the public using the county's website. (Ord.  
7 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord.  
8 93-042 Exh. H).

9  
10 3.08.020 Administration.

11 The director of the administrative services department shall have full authority and  
12 responsibility for the operation and ongoing improvement of the purchasing system under  
13 the direction of the county executive. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord.  
14 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

15  
16 3.08.030 Authority and functions.

17 A. The authority to recommend and implement administrative policies and procedures that  
18 provide a comprehensive basis for purchasing functions shall fall under the purview of the  
19 purchasing system.

20  
21 B. The following responsibilities shall be coordinated through the purchasing system:

22  
23 1. Continue to improve services to departments and agencies in the area of purchasing.

24  
25 2. Develop automated requisition and reporting systems.

26  
27 3. Improve purchasing productivity and control for all departments.

28  
29 4. Standardize high volume purchases.

30  
31 5. Develop efficient policies and procedures for acquiring goods and services.

32  
33 6. Implement inventory controls and minimize costs of goods and services.

34  
35 7. Prepare and make available to all departments standardized forms for requisitions,  
36 vouchers, inventories and any other form required for county operations.

37  
38 8. Assign purchase order numbers for the acquisition of supplies, materials, equipment,  
39 tools, services, rental of personal property, professional services and contracted public  
40 works exceeding \$2,500.

41  
42 9. Maintain vendor list pursuant to RCW 39.04.190.

43  
44 10. Whenever practically possible, contact at least three vendors to assure competitive  
45 pricing.

46  
47 11. Promote a competitive procurement environment by actively soliciting subscribers to the  
48 county's web-based purchasing notification system.

49  
50 12. Review and approve bid specifications and prepare invitations to bid pursuant to  
51 provisions set forth in this chapter.

52  
53 13. Check bids for accuracy and compliance with specifications and invitation to bid.

1  
2 14. Make bid recommendations on all awards to the county executive.  
3

4 15. Perform such other duties as may be required to further the purposes of this chapter.  
5 (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A;  
6 Ord. 93-042 Exh. H).  
7

8 3.08.040 Price quotations.

9 Whenever practically possible, price quotations from at least three vendors shall be solicited  
10 for contracted work constituting a public work and the acquisition of materials, supplies,  
11 services, tools, equipment or rental of personal property involving amounts greater than  
12 \$10,000 not exceeding \$40,000. Quotations for architects and engineers are subject to the  
13 requirements of Chapter 39.80 RCW. Records of all quotations obtained shall be maintained  
14 and shall be open to public inspection. Bids submitted periodically for the roster of rental  
15 equipment with operators may be used as the source of quotations for public works projects  
16 not exceeding \$40,000. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.  
17 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).  
18

19 3.08.050 Vendor lists.

20 Whatcom County will maintain a vendor list pursuant to RCW 39.04.190. (Ord. 2016-032  
21 Exh. A; Ord. 2013-029 Exh. A).  
22

23 3.08.060 Bids and proposals required.

24 Awards of contracts for the acquisition of materials, supplies, services, tools, equipment or  
25 rental of personal property and professional services exceeding \$40,000 will be based upon  
26 bids or proposals received in response to specifications and invitations to bid, except as  
27 follows:  
28

29 A. Sole source purchases shall not be required to go through competitive bidding. A  
30 purchase may be determined to be sole source by the county executive or designee when  
31 the bidding process would be futile because only one bidder could respond to the invitation.  
32

33 B. In the event of an emergency when the public interest or property of the county would  
34 suffer material injury or damage by delay, upon an order of the county executive declaring  
35 the existence of such emergency and reciting the facts constituting same, the requirements  
36 governing competitive bids with reference to any purchase or contract may be waived  
37 pursuant to RCW 36.32.270.  
38

39 C. Public works projects involving funds not exceeding the amount allowed in RCW  
40 39.04.155, Small works roster contract procedures – Limited public works process, or any  
41 successor statute, may be completed utilizing the small works roster contract award  
42 process.  
43

44 D. Acquisition is from another public entity.  
45

46 E. Contract does not require use of county funds.  
47

48 Proposals from architects and engineers are subject to the requirements of Chapter 39.80  
49 RCW. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034  
50 Exh. A; Ord. 93-042 Exh. H).  
51

52 3.08.070 Contractor's bond required for public works.

1 Whatcom County shall comply with the requirements of RCW 39.08.010. (Ord. 2016-032  
2 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042  
3 Exh. H).

4  
5 3.08.080 Labor and material claims.

6 Labor and material claims shall be filed pursuant to RCW 39.08.030. (Ord. 2016-032 Exh.  
7 A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

8  
9 3.08.090 Bid specifications, deposits and awards.

10 A. In developing specifications for bids or proposals, all reasonable efforts shall be made to  
11 ensure a competitive process and that a variety of vendors shall be capable of fulfilling the  
12 stated requirements of the county. Performance considerations shall be included in the  
13 specifications. However, nothing in this section shall be construed to limit the county from  
14 pursuing sole source procurement where adequate justification has been presented that  
15 such procurement is in the best interests of county operations.

16  
17 B. When the acquisition of materials, supplies, purchased services, tools, equipment, rental  
18 of personal property or professional services involves amounts greater than \$40,000 for a  
19 nonpublic work or public work award, the administrative services department shall be  
20 responsible for the review and approval of specifications and the preparation of invitations  
21 to bid pursuant to provisions set forth in this chapter.

22  
23 C. All bid specifications shall be in writing and placed on file for public inspection.

24  
25 D. All invitations for bids, requests for proposals, requests for qualifications and bid packets  
26 will be posted on the county's website. Project announcements and bid solicitations or  
27 proposals shall be published in the official county newspaper, and when in the county's best  
28 interest, other regional publications. Additionally, the county will offer complimentary bid  
29 packets to multiple northwest and national plan centers. Advertisements shall be published  
30 at least once ~~in each week for two consecutive weeks at least 13 days~~ prior to the last date  
31 upon which bids will be received. Such advertisement shall state:

32  
33 1. The date after which bids will not be received;

34  
35 2. The character of the work to be done, or the materials, equipment or service to be  
36 purchased; and

37  
38 3. Instruction on how to obtain additional information, including the complete bid packet.

39  
40 E. No bid shall be considered for public works unless it is accompanied by a bid deposit in  
41 the form of a surety bond, postal money order, cash, cashier's check, or certified check in  
42 an amount equal to five percent of the amount of the bid proposed.

43  
44 F. Should the bidder to whom the contract is awarded fail to enter into the contract or fail to  
45 furnish the contractor's bond within 10 days (exclusive of the date of notice) after notice of  
46 the award, the amount of the bid deposit shall be forfeited to the county. Thereafter, the  
47 award shall be made to the next lowest responsive bidder. The bid deposit of an  
48 unsuccessful bidder (if his bid deposit has not been forfeited) shall be returned after the  
49 required contractor's bond of the successful bidder has been accepted.

50  
51 G. Bids received shall be opened and read in public on the date named in the advertisement  
52 for bids, or on a subsequent date established in a bid addendum.  
53

1 H. After opening, all bids shall be reviewed and referred to the requisitioning department for  
2 recommendation of award. Bids will be forwarded by the director of the administrative  
3 services department or designee with a recommendation to the county executive for award.  
4

5 I. After opening and award, all bids shall be filed for public inspection, and available by  
6 telephone inquiry.  
7

8 J. Any or all bids may be rejected for good cause. If all bids are not rejected, the award  
9 shall be to the lowest responsive bidder. In determining which is the lowest responsive  
10 bidder, the county may take into consideration the bidder's responsiveness to the county's  
11 requirements, the quality of the articles to be purchased or leased, availability of parts and  
12 service, delivery time, the tax revenue the county would receive from purchasing from a  
13 supplier located within its boundaries and prior dealings with the bidder.  
14

15 K. The county may issue requests for proposals for services, or for technologically complex  
16 equipment including but not limited to computers, software, or telephone systems. If all  
17 proposals are not rejected, the award shall be to the highest rated proposal, taking into  
18 account the selection criteria published in the request for proposals.  
19

20 L. The county may award to multiple bidders for the same commodity or service when the  
21 bid specifications provide for special circumstances in the determination of which vendor is  
22 truly the lowest price to the county. Special circumstances may include differences in ability  
23 to deliver, delivery time, availability of material, special loading or unloading conditions,  
24 total cost including transport or labor if not included with bid item, performance of the  
25 delivered material, location of the source, and proximity to the delivery point.  
26

27 M. Contracts that require county council approval per WCC 3.08.100 may be  
28 administratively amended to a cumulative amount not to exceed \$10,000 or 10 percent of  
29 contract amount, whichever is greater; larger amounts require council approval. No  
30 administrative contract amendment may exceed authorized expenditure authority. (Ord.  
31 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;  
32 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).  
33

34 3.08.095 Small works roster contract award process.

35 This section may be utilized in the acquisition of contractual services necessary to complete  
36 public works projects as allowed under RCW 36.32.250, and consistent with RCW  
37 39.04.155. In order to use a small works roster contract award process in lieu of formal  
38 sealed bidding, the county shall:  
39

40 A. Publish at least twice each year in the official county newspaper a notice of the existence  
41 of the roster and solicit the names of contractors that are qualified for the requested  
42 categories of work. Notice shall be published at least once in each week for two consecutive  
43 weeks prior to the last date upon which response to the notice will be received, and may be  
44 published for as many additional publications as shall be considered in the county's interest.  
45

46 B. In every case a certain category of work is to be accomplished under this section, all  
47 contractors responding to the above notice and indicating their qualification to perform the  
48 category of work proposed shall be contacted and provided an invitation to bid.  
49

50 C. Include in the invitation to bid the date on which bids will be received, the scope and  
51 nature of work to be performed, the materials and equipment to be furnished, and, if not  
52 provided otherwise in the invitation to bid, where the detailed plans and specifications may  
53 be seen and obtained.

1  
2 D. Otherwise apply the provisions of WCC 3.08.090(B), (E), (F), (G), (H), (I), (J), and (M).

3  
4 E. Forgo the advertisement of a contract awarded through use of the small works roster.  
5 (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A).

6  
7 3.08.100 Council approval required.

8 County council approval is required for the following:

9  
10 A. Contracts or bid awards exceeding \$40,000 and all real property leases, except when:

11  
12 1. Exercising an option contained in a contract or lease previously approved by the council.

13  
14 2. Contract is for the design, construction, right-of-way acquisition, professional services, or  
15 other capital costs approved by the county council in a capital budget appropriation  
16 ordinance.

17  
18 3. Contract or bid award is for supplies or for equipment approved in a capital budget  
19 appropriation ordinance.

20  
21 4. Contract is for technical support and software maintenance from the developer of  
22 proprietary software which is currently being used by Whatcom County.

23  
24 5. Contract is for manufacturer's technical support and hardware maintenance of electronic  
25 systems.

26  
27 6. Pursuant to and within the scope of a declaration of emergency made by the county  
28 executive under WCC 3.08.060(B). The county executive, pursuant to a declaration of  
29 emergency, shall submit the contract to the county council for informational purposes at the  
30 council's next regular or special meeting.

31  
32 B. All informational materials distributed to more than 20 percent of county residences for  
33 the purpose of informing or educating the public on a specific capital project, levy or tax.  
34 (Ord. 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.  
35 A; Ord. 2000-025; Ord. 97-034 Exh. A; Ord. 96-034; Ord. 93-042 Exh. H).

36  
37 3.08.110 Unregistered or unlicensed contractors prohibited.

38 No contract shall be entered into or executed with any contractor who is not registered or  
39 licensed as required by the laws of this state (except only as permitted under RCW  
40 39.06.010 for highway projects for contractors who have been prequalified as required  
41 under RCW 47.28.070). (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.  
42 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

43  
44 3.08.120 Joint purchasing.

45 The county may enter into agreements with the state or with any agency, political  
46 subdivision, or unit of local government to purchase goods or services cooperatively. Joint  
47 purchasing services are hereby authorized and encouraged with any other municipal  
48 corporation in Whatcom County. Assistance to the participating municipal corporation may  
49 be given in any way except that a sale or contract shall be between the vendor and the  
50 participating municipal corporation and not Whatcom County. Bids and quotes may be  
51 obtained jointly based on volume if it is in the county's best interest to do so. (Ord. 2016-  
52 032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-  
53 042 Exh. H).

1  
2 3.08.125 Nondiscrimination.

3 Whatcom County endeavors to secure for all individuals within the county the freedom from  
4 discrimination because of race, color, religion, national origin, gender, sexual orientation  
5 (including gender identity), age, marital status, or disability in connection with employment,  
6 and thereby to promote the interests, rights and privileges of individuals within the county.  
7

8 A. All contracts proposed by county staff shall incorporate equal employment opportunity  
9 clauses which shall read as follows, or as subsequently amended to be consistent with  
10 existing law:  
11

12 1. Nondiscrimination in Employment. The county's policy is to provide equal opportunity in  
13 all terms, conditions and privileges of employment for all qualified applicants and employees  
14 without regard to race, color, creed, religion, national origin, sex, sexual orientation  
15 (including gender identity), age, marital status, disability, or veteran status. The contractor  
16 shall comply with all laws prohibiting discrimination against any employee or applicant for  
17 employment on the grounds of race, color, creed, religion, national origin, sex, sexual  
18 orientation (including gender identity), age, marital status, disability, political affiliation, or  
19 veteran status, except where such constitutes a bona fide occupational qualification.  
20

21 Furthermore, in those cases in which the contractor is governed by such laws, the  
22 contractor shall take affirmative action to ensure that applicants are employed, and treated  
23 during employment, without regard to their race, color, creed, religion, national origin, sex,  
24 age, marital status, sexual orientation (including gender identity), disability, or veteran  
25 status, except where such constitutes a bona fide occupational qualification. Such action  
26 shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations,  
27 rate of pay or other forms of compensation benefits, selection for training including  
28 apprenticeship, and participation in recreational and educational activities. In all solicitations  
29 or advertisements for employees placed by them or on their behalf, the contractor shall  
30 state that all qualified applicants will receive consideration for employment without regard  
31 to race, color, religion, sex or national origin.  
32

33 The foregoing provisions shall also be binding upon any subcontractor; provided, that the  
34 foregoing provisions shall not apply to contracts or subcontractors for standard commercial  
35 supplies or raw materials, or to sole proprietorships with no employees.  
36

37 2. Nondiscrimination in Client Services. The contractor shall not discriminate on the grounds  
38 of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation  
39 (including gender identity), disability, or veteran status; or deny an individual or business  
40 any service or benefits under this agreement unless otherwise allowed by applicable law; or  
41 subject an individual or business to segregation or separate treatment in any manner  
42 related to his/her/its receipt any service or services or other benefits provided under this  
43 agreement unless otherwise allowed by applicable law; or deny an individual or business an  
44 opportunity to participate in any program provided by this agreement unless otherwise  
45 allowed by applicable law.  
46

47 B. Noncompliance with the nondiscrimination in employment and client services provisions  
48 will be grounds for terminating a contract and may hinder a contractor's eligibility for future  
49 contracts. (Ord. 2021-016 Exh. A).  
50

51 3.08.130 Amendments to chapter.

52 The county council reserves the exclusive right to alter, amend, rescind, abrogate, delete,  
53 supersede or replace the provisions of this chapter, or any part thereof, in any manner not

1 inconsistent with state law. Whether or not the county council takes action, the provisions of  
2 this chapter shall be deemed automatically altered, amended, or superseded to conform to  
3 any mandatory state administrative ruling or statute, as of the effective date of any such  
4 enactment appertaining to the matters covered in this chapter, to the effect that the  
5 provisions of this chapter shall at all times conform to, and never conflict with, said state  
6 laws and regulations. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;  
7 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

8 ~~3.08.135 Sunset provision.~~

9 ~~The county council must renew this chapter by December 31, 2021, or the chapter will~~  
10 ~~revert to the language in place on August 1, 2016. All contracts will be administered by the~~  
11 ~~purchasing ordinance in place at the time the contract was signed. (Ord. 2018-033 Exh. A;~~  
12 ~~Ord. 2016-032 Exh. A)~~

13 3.08.140 Severability.

14 If any provision of this chapter is held to be invalid, the remainder of the chapter shall  
15 remain in effect. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;  
16 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).