

**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**

Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kaylee Galloway  
Kathy Kershner

**WHATCOM COUNTY COUNCIL**

**COMBINED  
AGENDA PACKET FOR  
FEBRUARY 8, 2022**

**INCLUDES INFORMATION  
FOR THE FOLLOWING MEETINGS:**

**9:30 A.M. – COMMITTEE OF THE WHOLE – EXECUTIVE SESSION  
(ADJOURNS BY 9:45 A.M.)**

**9:50 A.M. – NATURAL RESOURCES COMMITTEE  
(ADJOURNS BY 10:50 A.M.)**

**11 A.M. - FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE  
(ADJOURNS BY NOON)**

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

**2:05 P.M. – PUBLIC WORKS AND HEALTH COMMITTEE  
(ADJOURNS BY 2:20 P.M.)**

**2:25 P.M. – CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE  
(ADJOURNS BY 2:40 P.M.)**

**2:45 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://whatcom.legistar.com)**

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

# **COMMITTEE AGENDAS**

**COUNCIL COMMITTEE OF THE WHOLE – EXECUTIVE SESSION**  
**9:30 A.M. TUESDAY, February 8, 2022 (ADJOURNS BY 9:45 A.M.)**  
**Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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

## **COMMITTEE DISCUSSION**

1. AB2022-090 Discussion of pending litigation with Civil Deputy Prosecutor, George Roche, re: Geneva Langworthy, Plaintiff, v. Washington Courts and George Roche, Defendants, United States District Court, Western District of Washington 2:21-cv-1615-RAJ. [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]  
**Page 12**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL NATURAL RESOURCES COMMITTEE**  
**9:50 A.M. TUESDAY, February 8, 2022 (ADJOURNS BY 10:50 A.M.)**  
**Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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

## **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

1. AB2022-071 Resolution affirming the Conservation Easement Program Oversight Committee ranking and authorizing Whatcom County Conservation Easement Program Administrator and Whatcom County Executive to proceed with the acquisition of conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications  
**Pages 13 – 37**

**Items Added by Revision**

**Other Business**

**Adjournment**



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**COUNCIL FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE**  
**11:00 A.M. TUESDAY, February 8, 2022 (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. AB2022-072 Request authorization for the County Executive to enter into a contract between Whatcom County and Aristo Healthcare Services to provide immediate staffing at COVID Isolation and Quarantine Facility overflow sites, in the amount of \$705,200  
**Pages 38 – 62**

**COUNCIL "CONSENT AGENDA" ITEMS**

1. AB2022-065 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice, for Organized Crime Drug Enforcement Task Force (OCDEF), in the amount of \$2,500.00  
**Pages 63 – 77**
2. AB2022-075 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham to provide winter shelters during severe weather emergencies  
**Pages 78 – 90**
3. AB2022-076 Resolution amending the 2022 CEDS project list to include an additional Port of Bellingham project and revise the name of a Whatcom County project already listed  
**Pages 91 – 120**
4. AB2022-078 Request authorization for a Letter of Understanding between Whatcom County and The International Organization of Masters, Mates and Pilots (MMP) and the Inlandboatmen's Union of the Pacific (IBU) to amend the current Collective Bargaining Agreement for the period of January 1, 2020 - December 31, 2022  
**Pages 121 – 124**
5. AB2022-091 Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Health Care Authority to provide funding to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the grant period 10/01/21 - 06/30/23 in the amount of \$1,175,834.00  
**Pages 125 – 182**
6. AB2022-092 Request authorization for the County Executive to enter into a contract between Whatcom County and Sea Mar Community Health Centers to furnish goods and services necessary to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the contract term 10/1/21 - 03/31/22 and not to exceed the amount of \$371,583.00  
**Pages 183 – 245**
7. AB2022-093 Request authorization for the County Executive to enter into a contract between Whatcom County and Gallagher Benefit Services, Inc. to provide a compensation study for unrepresented employees, in an amount not to exceed \$50,000  
**Pages 246 – 263**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL PLANNING AND DEVELOPMENT COMMITTEE**  
**1:00 P.M. TUESDAY, February 8, 2022 (ADJOURNS BY 2:00 P.M.)**  
**Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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

**COMMITTEE DISCUSSION**

1. AB2022-084 Discussion of an ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations) and 22 (Land Use and Development)  
**Pages 264 – 282**
2. AB2021-605 Discussion on proposed amendments to the Whatcom County Code Title 20 (Zoning) to provide additional affordable housing options  
**Pages 283 – 306**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL PUBLIC WORKS & HEALTH COMMITTEE**  
**2:05 P.M. TUESDAY, February 8, 2022 (ADJOURNS BY 2:20 P.M.)**  
**Virtual Meeting**

**Call To Order**

**Roll Call**

**Announcements**

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**COMMITTEE DISCUSSION**

1. AB2022-085 Discussion regarding COVID-19 Pandemic Response Review project work plan  
**Page 307**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE**  
**2:25 P.M. TUESDAY, February 8, 2022 (ADJOURNS BY 2:40 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. AB2022-048 Ordinance authorizing Superior Court to appoint a statutory commissioner  
**Pages 308 – 310**

**Items Added by Revision**

**Other Business**

**Adjournment**

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**COUNCIL COMMITTEE OF THE WHOLE**  
**2:45 P.M. TUESDAY, February 8, 2022 (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. AB2022-096 Presentation on ranked choice voting  
**Pages 311 – 324**

**COMMITTEE DISCUSSION**

1. AB2021-345 Discussion regarding reopening Council operations to the public  
**Pages 325 – 326**
2. AB2022-097 Discussion on renaming Natural Resources Committee  
**Pages 327 – 329**

**COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

1. AB2021-594 Ordinance amending Whatcom County Code Chapter 2.02 (County Council) to define absence and temporary disability  
**Pages 330 – 340**

2.      AB2022-079      Ordinance amending Whatcom County Code 2.02.085, Council Standing Committees  
   - Committee Action  
   **Pages 341 – 343**

**Items Added by Revision**

**Other Business**

**Adjournment**

# **COUNTY COUNCIL**

## **REGULAR COUNCIL MEETING**

**6:00 P.M. TUESDAY, February 8, 2022**

**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. MIN2022-008 REVISED MINUTES for Regular County Council on December 7, 2021  
**Pages 344 – 371**
2. MIN2022-009 Committee of the Whole for January 25, 2022  
**Pages 372 – 377**
3. MIN2022-010 Regular County Council for January 25, 2022  
**Pages 378 – 399**
4. MIN2022-011 Health Board for February 1, 2022  
**Pages 400 – 407**

## **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. AB2022-036 Ordinance repealing the Cherry Point Ferndale Subarea Plan and deleting a reference to the Subarea Plan in the Whatcom County Comprehensive Plan  
**Pages 408 – 480**  
  
(Recommended motion: Forward for concurrent review. This ordinance cannot be adopted this evening. The Council must consider initiated comprehensive plan amendments concurrently so that the cumulative effect of the various proposals can be evaluated. All proposed amendments will be scheduled together for final adoption at a later date.)

2. AB2022-039 Ordinance to temporarily close Gulf Road to Motorized Vehicular Traffic  
**Pages 481 – 487**
3. AB2022-040 Ordinance for the legal establishment of a speed limit for a portion of Nulle Road  
**Pages 488 – 492**
4. AB2022-041 Ordinance to install a stop sign on Northwest Drive  
**Pages 493 – 498**
5. AB2022-042 Ordinance regarding the legal establishment of existing yield signs on county roads  
**Pages 499 – 505**

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

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.

#### **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. AB2022-065 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice, for Organized Crime Drug Enforcement Task Force (OCDEF), in the amount of \$2,500.00  
**Pages 63 – 77**
2. AB2022-075 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Bellingham to provide winter shelters during severe weather emergencies  
**Pages 78 – 90**
3. AB2022-076 Resolution amending the 2022 CEDS project list to include an additional Port of Bellingham project and revise the name of a Whatcom County project already listed  
**Pages 91 – 120**
4. AB2022-078 Request authorization for a Letter of Understanding between Whatcom County and The International Organization of Masters, Mates and Pilots (MMP) and the Inlandboatmen's Union of the Pacific (IBU) to amend the current Collective Bargaining Agreement for the period of January 1, 2020 - December 31, 2022  
**Pages 121 – 124**
5. AB2022-091 Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Health Care Authority to provide funding to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the grant period 10/01/21 - 06/30/23 in the amount of \$1,175,834.00  
**Pages 125 – 182**

6. AB2022-092 Request authorization for the County Executive to enter into a contract between Whatcom County and Sea Mar Community Health Centers to furnish goods and services necessary to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the contract term 10/1/21 - 03/31/22 and not to exceed the amount of \$371,583.00  
**Pages 183 – 245**
7. AB2022-093 Request authorization for the County Executive to enter into a contract between Whatcom County and Gallagher Benefit Services, Inc. to provide a compensation study for unrepresented employees, in an amount not to exceed \$50,000  
**Pages 246 – 263**

## **OTHER ITEMS**

### **(From Council Natural Resources Committee)**

1. AB2022-071 Resolution affirming the Conservation Easement Program Oversight Committee ranking and authorizing Whatcom County Conservation Easement Program Administrator and Whatcom County Executive to proceed with the acquisition of conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications  
**Pages 13 – 37**

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

2. AB2022-072 Request authorization for the County Executive to enter into a contract between Whatcom County and Aristo Healthcare Services to provide immediate staffing at COVID Isolation and Quarantine Facility overflow sites, in the amount of \$705,200  
**Pages 38 – 62**

### **(From Council Criminal Justice and Public Safety Committee)**

3. AB2022-048 Ordinance authorizing Superior Court to appoint a statutory commissioner  
**Pages 308 – 310**

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

4. AB2022-079 Ordinance amending Whatcom County Code 2.02.085, Council Standing Committees - Committee Action  
**Pages 341 – 343**
5. AB2021-594 Ordinance amending Whatcom County Code Chapter 2.02 (County Council) to define absence and temporary disability  
**Pages 330 – 340**

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

6. AB2021-648 Ordinance adopting amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County and repealing Ordinance No. 2021-066  
**Pages 506 – 635**

7. AB2022-080 Resolution supporting state legislative action resetting the deadline for participation in the voluntary stewardship program and supporting the consideration of an ordinance consistent with RCW 36.70A.710(b)(i-iii) in the event such legislation is passed  
**Pages 636 – 638**

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

1. AB2022-095 Appointment to fill a vacancy on the Flood Control Zone District Advisory Committee, Geographic Area Representative position - alternates: Theresa Sygitowicz, Daniel Dahlquist, Joni Hensley, Keith Hoekema, Loren Hoekema (Council acting as the Flood Control Zone District Board of Supervisors)  
**Pages 639 – 656**

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

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

1. AB2022-094 Request confirmation of Executive Sidhu's reappointment of Kara Allen to the North Sound Behavioral Health Administrative Services Organization's board  
**Pages 657 – 660**

## **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. AB2021-420 Ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest  
**Pages 661 – 687**

**This proposal was forwarded by Council on August 10, 2021 to be considered with other proposed 2021 Comprehensive Plan and zoning amendments. Per Whatcom County Code 2.02.115, because the ordinance was not adopted within 120 days of its original introduction date, it must be reintroduced, notice of introduction republished, and at least 13 days elapsed before the ordinance can come up for final consideration by the Council.**

2. AB2022-083 Ordinance amending Ordinance No. 2021-064 (Review of Response to COVID-19 Pandemic) to change project timeline  
**Pages 688 – 690**
3. AB2022-086 Ordinance amending the 2022 Whatcom County Budget, request no. 5, in the amount of \$7,750,231  
**Pages 691 – 736**
4. AB2022-088 Ordinance closing the State Street Building Acquisition and Improvement Fund 348  
**Pages 737 – 738**



5. AB2022-089 Ordinance establishing the Way Station Project Fund and establishing a project based budget for the Way Station Project  
**Pages 739 – 743**
6. AB2022-082 Ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations) and 22 (Land Use and Development)  
**Pages 744 – 762**
7. AB2022-073 Receipt of applications for the Stakeholder Advisory Committee for the Justice Project, applicants: Debra David, Peter Frazier (application deadline for any other applicants to this vacancy is 10 a.m. on February 15, 2022)  
**Pages 763 – 770**

**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: AB2022-090

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<b>File ID:</b>	AB2022-090	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<b>Entered by:</b>	AWebb@co.whatcom.wa.us		
<b>Department:</b>	Prosecuting Attorney's Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole-Executive Session				<b>Final Action:</b>
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

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

Discussion of pending litigation with Chief Civil Deputy Prosecutor Karen Frakes regarding Geneva Langworthy, Plaintiff, v. Washington Courts and George Roche, Defendants, United States District Court, Western District of Washington 2:21-cv-1615-RAJ. [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]

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

Discussion of pending litigation with Chief Civil Deputy Prosecutor Karen Frakes regarding Geneva Langworthy, Plaintiff, v. Washington Courts and George Roche, Defendants, United States District Court, Western District of Washington 2:21-cv-1615-RAJ. [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW 42.30.110(1)(i)]

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
<hr/>			
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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: AB2022-071

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<b>File ID:</b>	AB2022-071	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/19/2022	<b>Entered by:</b>	RSnijder@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Natural Resources Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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Primary Contact Email: rsnijder@whatcomcounty.us

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

Resolution affirming the Conservation Easement Program Oversight Committee ranking and authorizing Whatcom County Conservation Easement Program Administrator and Whatcom County Executive to proceed with the acquisition of conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications

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

Conservation Easement Program update, please see attached staff memo for full summary.

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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 Resolution, Ranked Applicant List, Presentation

**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius, AICP**  
Director

## Memorandum

TO: Honorable Whatcom County Councilmembers  
Honorable Satpal Sidhu, Whatcom County Executive

THROUGH: Mark Personius, Director, PDS *uip*

FROM: Becky Snijder van Wissenkerke, Conservation Easement Program Admin

DATE: January 13, 2022

SUBJECT: Presentation of the Conservation Easement Program update and request for approval to proceed with acquisition of four conservation easements

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Whatcom County Conservation Easement Program (CEP) staff would like to provide a program update and request approval to enter into a Purchase and Sale Agreement to acquire conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors application parcels.

- The Vander Veen application is located off of Lindsay Rd in Johnson Creek watershed. This application will result in acquiring 5 development rights and effectively protect 57 acres of working farmland.
- The Rethlefsen application is located off of Y Rd in Anderson Creek watershed. This application will result in acquiring 9 development rights and effectively protect 49 acres of working farmland.
- The Savage application is located off of Main St, Custer in California Creek watershed. This application will result in acquiring 3 development rights and effectively protect 40 acres of working farmland.
- The Moors application is located off of Sand Rd in Anderson Creek watershed. This application will result in acquiring 7 development rights and effectively protect 35 acres of working forestland.

Thank you for receiving this program update and considering the above referenced request.

### **Request Summary**

Conservation Easement Program Staff requests approval of the ranked list recommended by the Conservation Easement Program Oversight Committee and approval to authorize the Executive to enter into a Purchase and Sale Agreement to acquire conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications, provided appraisal is completed, conservation easement is drafted which meets the CEP guidelines, landowners have agreed to the offer price and conditions, and budget authority has been adopted by Whatcom County Council.

Please contact CEP Administrator, Becky Snijder van Wissenkerke, at (360)778-5956 with any questions.

SPONSORED BY: \_\_\_\_\_  
PROPOSED BY: \_\_\_\_\_ Planning  
INTRODUCTION DATE: \_\_\_\_\_

**RESOLUTION # \_\_\_\_\_**

**AFFIRMING THE CONSERVATION EASEMENT PROGRAM OVERSIGHT  
COMMITTEE RANKING AND AUTHORIZING WHATCOM COUNTY  
CONSERVATION EASEMENT PROGRAM ADMINISTRATOR AND WHATCOM  
COUNTY EXECUTIVE TO PROCEED WITH THE ACQUISITION OF  
CONSERVATION EASEMENTS ON THE VANDER VEEN, RETHLEFSEN, SAVAGE,  
AND MOORS APPLICATIONS**

**WHEREAS**, Whatcom County government recognizes agriculture and forestry as major contributors to the local economy and a high quality of life for Whatcom County citizens; and

**WHEREAS**, The Growth Management Act and the County Comprehensive Plan support the retention of agricultural and forestry lands of long term commercial significance and encourage the use of innovative techniques to do so; and

**WHEREAS**, Ordinance #92-002 enacted a property tax levy known as the Conservation Futures Tax as authorized by RCW 84.34.230 to provide a funding source to assist in acquiring “open space land, farm and agricultural land, and timber land, and a significant Conservation Futures fund balance is available for additional farm land protection efforts”; and

**WHEREAS**, Ordinance #2002-054 adopted Whatcom County Code Title 3.25A that authorized the creation of a Purchase of Development Rights (PDR) program that offers voluntary farm agreements that include the purchase of agricultural conservation easements on farmable land within Whatcom County; and

**WHEREAS**, Ordinance #2002-054 and WCC 3.25A established a Purchase of Development Rights Oversight Committee to provide review and assistance to the PDR Program Administrator; and

**WHEREAS**, The Whatcom County Council adopted the PDR Guidelines Document through Resolution #2002-040 which includes specific direction for program administration and conservation easement acquisitions; and

**WHEREAS**, Ordinance #2018-065 amended Whatcom County Code Title 3.25A to direct the PDR Program to also offer voluntary agreements to purchase forestry and ecological conservations easements on working forestlands and important ecosystem areas within Whatcom County; and

**WHEREAS**, Ordinance #2021-037 amended Whatcom County Code Title 3.25A to change the program name to be the Whatcom County Conservation Easement Program (CEP); and

**WHEREAS**, Council, pursuant to Conservation Easement Program Guidelines Document, must affirm or modify the properties as submitted by the CEP Oversight Committee; and

**WHEREAS**, Council has reviewed the application ranking and background materials at a public meeting, with input by County staff and CEP Oversight Committee members; and

**WHEREAS**, Council has determined the ranking in accordance with their policy priorities and the requirements of Title 3.25A and the Conservation Easement Program Guidelines Document; and

**WHEREAS**, The Washington State Recreation and Conservation Office has approved matching funds to support acquisition of the agricultural and forestry conservation easements on the Rethlefsen and Moors projects; and

**WHEREAS**, The United States Department of Agriculture has approved matching funds to support acquisition of the agricultural conservation easements on the Vander Veen and Savage projects; and

**WHEREAS**, The CEP Oversight Committee met on October 22, 2021 to develop a ranking of active applications received to date and forward that ranking to Council; and

**WHEREAS**, The CEP Oversight Committee considered the ranked list of active applications and recommended at their October 22, 2021 meeting that County Council authorize the CEP Administrator and County Executive to proceed with the acquisition of conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications.

**NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that:

1. The CEP Oversight Committee and Administrator proceed with the acquisition of four (4) conservation easements on the Vander Veen, Rethlefsen, Savage, and Moors applications pursuant to the process outlined in the CEP Guidelines Document.
2. The Executive is authorized to enter into a Purchase and Sale Agreement for the Vander Veen, Rethlefsen, Savage, and Moors properties, provided:
  - a. Appraisals are completed and conservation easements are drafted which meet the requirements of the Whatcom County Conservation Easement Program, and
  - b. Landowners have agreed to the offer price and conservation easement conditions, and
  - c. Budget authority has been adopted by the Whatcom County Council.

3. Expenditures of Conservation Futures Funds, within budget authority, are authorized to cover expenses associated with purchase of conservation easement, including title search and insurance, appraisal services, easement monitoring and enforcement fees.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED as to form:

Approved by email/C Quinn/B Snijder  
Civil Deputy Prosecutor

Rank	Applicant	Type	Acres	# of DRs	Zone	Final Score	Estimated Cost	Cost per DR	Cost per Acre	50% Match Funding	50% Match Funding	Purchase Year
1	VanderVeen	Agricultural	57	5	R10	73	\$180,000	\$36,000	\$3,158	Federal Funds Secured	Conservation Futures Fund	2022
2	Rethlefsen	Agricultural	49	9	R5	71	\$395,000	\$43,889	\$8,084	State Funds Secured	Conservation Futures Fund	2022
3	Savage	Agricultural	40	3	R10	63	\$170,000	\$56,667	\$4,250	Federal Funds Secured	Conservation Futures Fund	2022
4	Moors	Forestry	36	7	R5	60	\$250,000	\$35,714	\$6,944	State Funds Secured	Conservation Futures Fund	2022
5	Jacoby	Agricultural	100	2	AG, RF	79	\$300,000	\$150,000	\$2,999	None Secured	Conservation Futures Fund	2024
6	Taylor	Ecological	15	1	R5	66	\$100,000	\$100,000	\$6,667	None Secured	Conservation Futures Fund	2024
7	Loving	Ecological	20	1	RF	50	\$75,000	\$75,000	\$3,750	None Secured	Conservation Futures Fund	2024
8	Harman	Ecological	40	7	R5	46	\$250,000	\$35,714	\$6,194	None Secured	Conservation Futures Fund	2024
9	Newell	Ecological	20	3	R5	45	\$100,000	\$33,333	\$4,950	None Secured	Conservation Futures Fund	2024

Request to Purchase





# Conservation Easement Program Update

Whatcom County Council  
Natural Resources Committee  
February 8, 2022

# Presentation Agenda



- ▶ Program Overview
- ▶ Recent and Pending Acquisitions
- ▶ Program Summary
- ▶ Review Ranked Applicant List
- ▶ Review Proposed Resolution to:
  - Confirm ranking
  - Proceed with acquisition of four easements



# Program Overview



# Recent Acquisitions



- ▶ Martin Agricultural Conservation Easement
  - Removed 1 DR, Protects 54 Acres
- ▶ Kiera-Duffy Forestry Conservation Easement
  - Removed 2 DR, Protects 56 Acres
- ▶ Kiera-Duffy Ecological Conservation Easement
  - Removed 2 DR, Protects 57 Acres

# Pending Acquisitions



- ▶ Jones Agricultural Conservation Easement
  - Remove 8 DR, Protect 47 Acres
  - Easement Cost: \$290,000
  - Match Funding: WA Recreation & Conservation Office
  
- ▶ Vanderwerff Agricultural Conservation Easement
  - Remove 3 DR, Protect 20 Acres
  - Easement Cost: \$200,000
  - Match Funding: WA Recreation & Conservation Office & USDA

# Program Summary



**33** Conservation  
Easements

**184** Development  
Rights Removed

**1,668** Acres  
Protected

**53%** Easement Cost  
Covered by Grants

# Ranked Applicant List

## February 2022

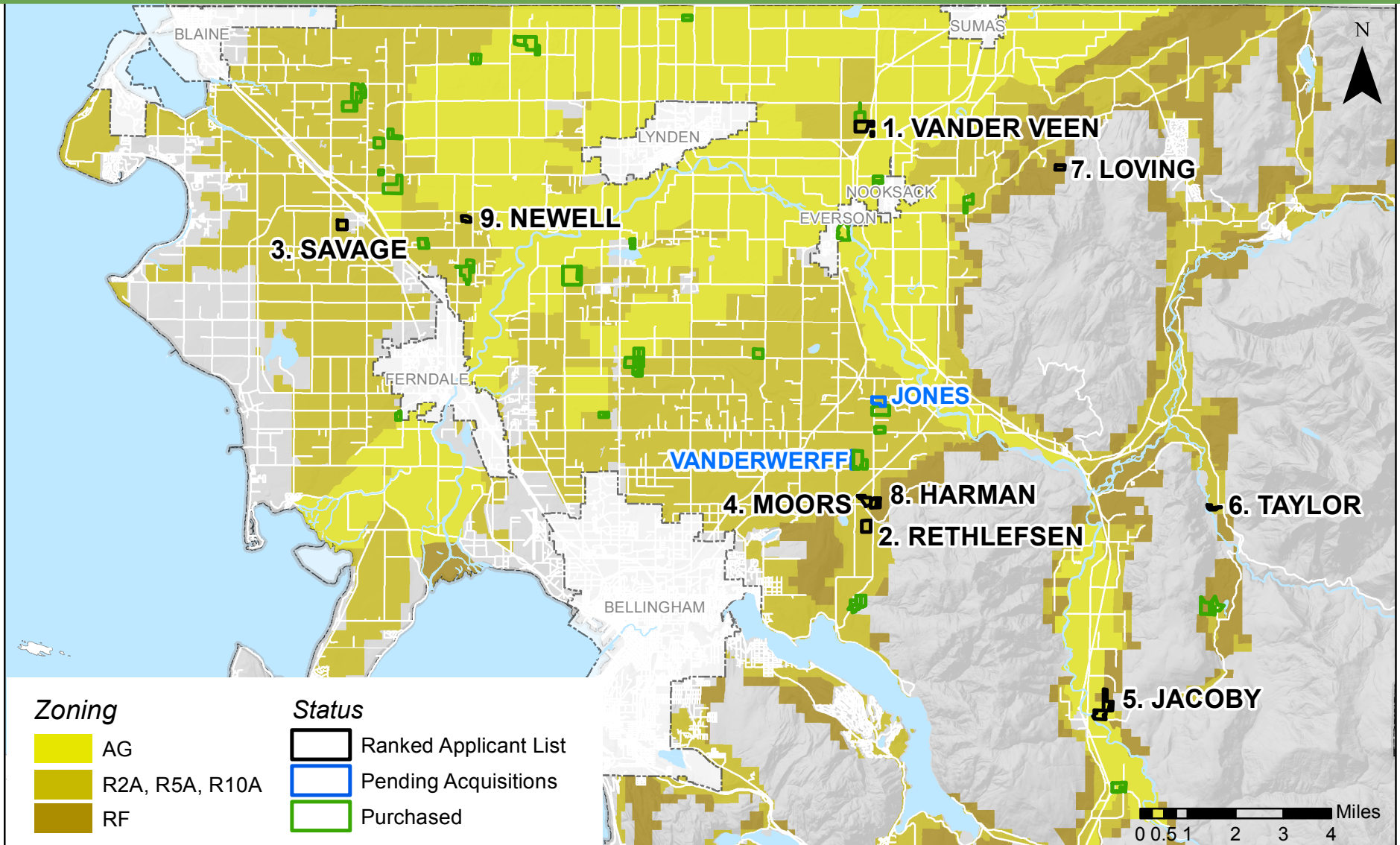


Rank	Applicant	Type	Acres	# of DRs	Zone	Final Score	Estimated Cost	Cost per DR	Cost per Acre	50% Match Funding	50% Match Funding
1	VanderVeen	Agricultural	57	5	R10	73	\$180,000	\$36,000	\$3,158	Federal Funds Secured	Conservation Futures Fund
2	Rethlefsen	Agricultural	49	9	R5	71	\$395,000	\$43,889	\$8,084	State Funds Secured	Conservation Futures Fund
3	Savage	Agricultural	40	3	R10	63	\$170,000	\$56,667	\$4,250	Federal Funds Secured	Conservation Futures Fund
4	Moors	Forestry	36	7	R5	60	\$250,000	\$35,714	\$6,944	State Funds Secured	Conservation Futures Fund
5	Jacoby	Agricultural	100	2	AG, RF	79	\$300,000	\$150,000	\$2,999	None Secured	Conservation Futures Fund
6	Taylor	Ecological	15	1	R5	66	\$100,000	\$100,000	\$6,667	None Secured	Conservation Futures Fund
7	Loving	Ecological	20	1	RF	50	\$75,000	\$75,000	\$3,750	None Secured	Conservation Futures Fund
8	Harman	Ecological	40	7	R5	46	\$250,000	\$35,714	\$6,194	None Secured	Conservation Futures Fund
9	Newell	Ecological	20	3	R5	45	\$100,000	\$33,333	\$4,950	None Secured	Conservation Futures Fund

Request to Purchase

# CEP Applicant Map

## February 2022

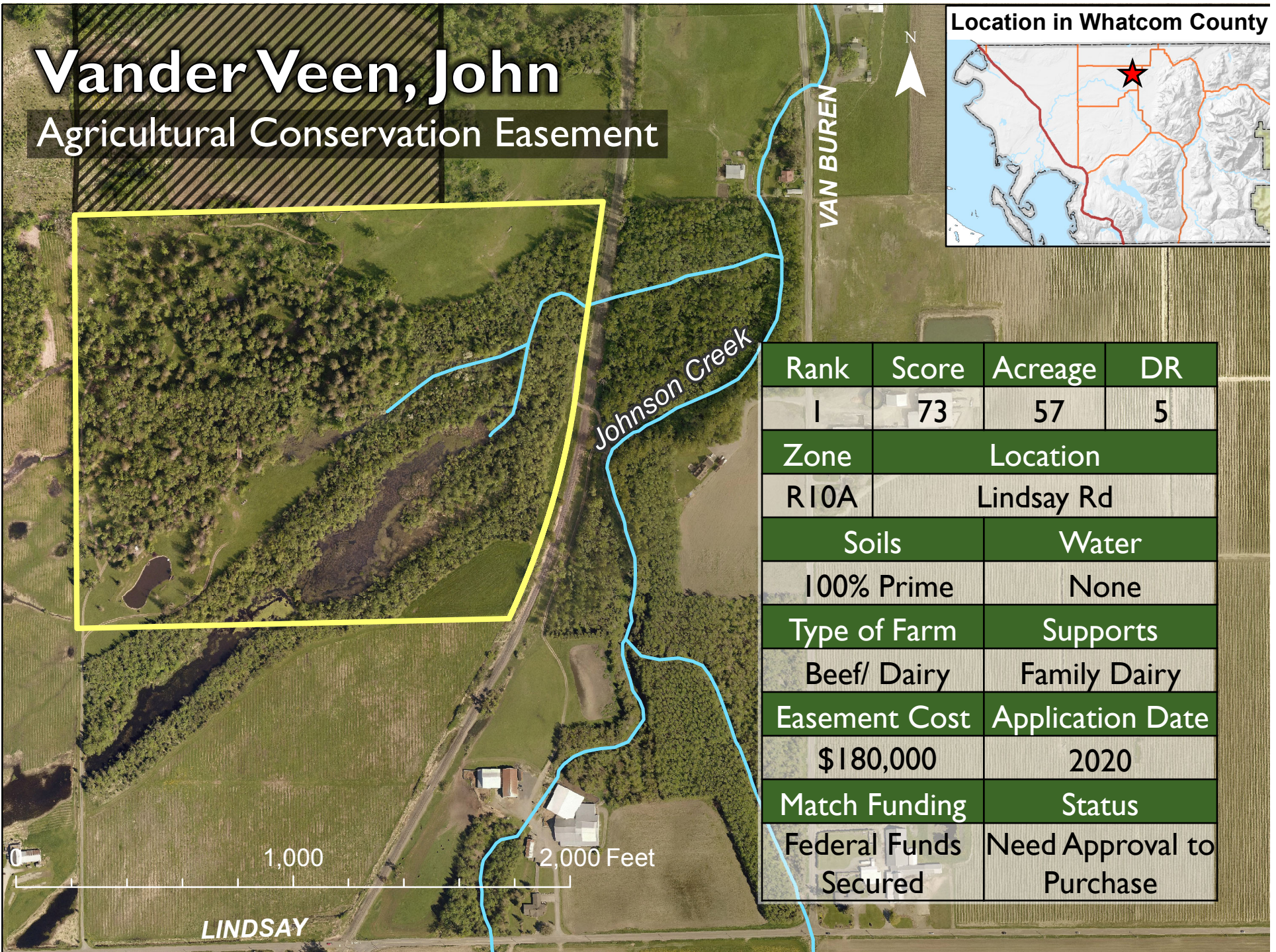
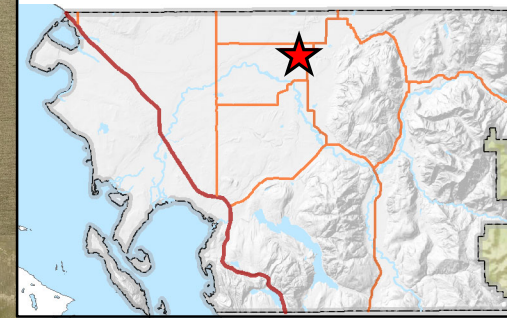




# Vander Veen, John

## Agricultural Conservation Easement

Location in Whatcom County



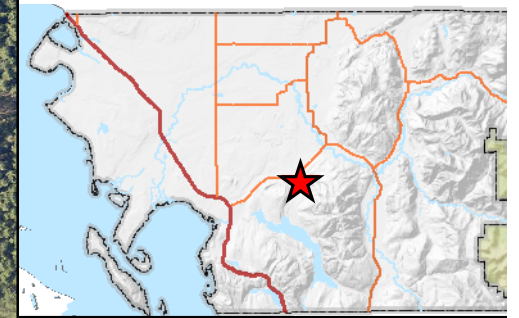
Rank	Score	Acreage	DR
I	73	57	5
Zone	Location		
R10A	Lindsay Rd		
Soils		Water	
100% Prime		None	
Type of Farm		Supports	
Beef/ Dairy		Family Dairy	
Easement Cost		Application Date	
\$180,000		2020	
Match Funding		Status	
Federal Funds Secured		Need Approval to Purchase	



# Rethlefsen, Darlene

## Agricultural Conservation Easement

Location in Whatcom County



Rank	Score	Acreage	DR
2	71	49	9
Zone	Location		
R5A	Y Rd		
Soils		Water	
100% Prime		Claim	
Type of Farm		Supports	
Sheep/ Hay		Lydia's Flock	
Easement Cost		Application Date	
\$395,000		2019	
Match Funding		Status	
State Funds Secured		Need Approval to Purchase	

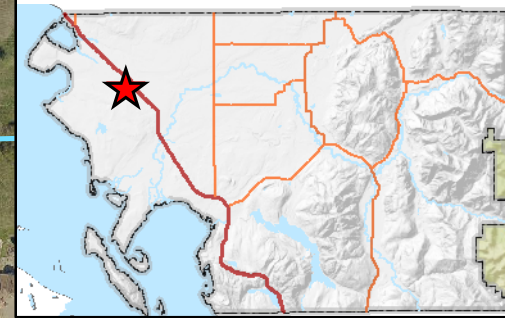
0 1,000 2,000 Feet



# Savage, Michele

## Agricultural Conservation Easement

Location in Whatcom County



MAIN

California Creek

Rank	Score	Acreage	DR
3	63	40	3
Zone	Location		
R10A	Custer/ California Creek		
Soils		Water	
100% Prime		Claim	
Type of Farm		Supports	
Sheep/Goats		Family Farm	
Easement Cost		Application Date	
\$170,000		2020	
Match Funding		Status	
Federal Funds Secured		Need Approval to Purchase	

0

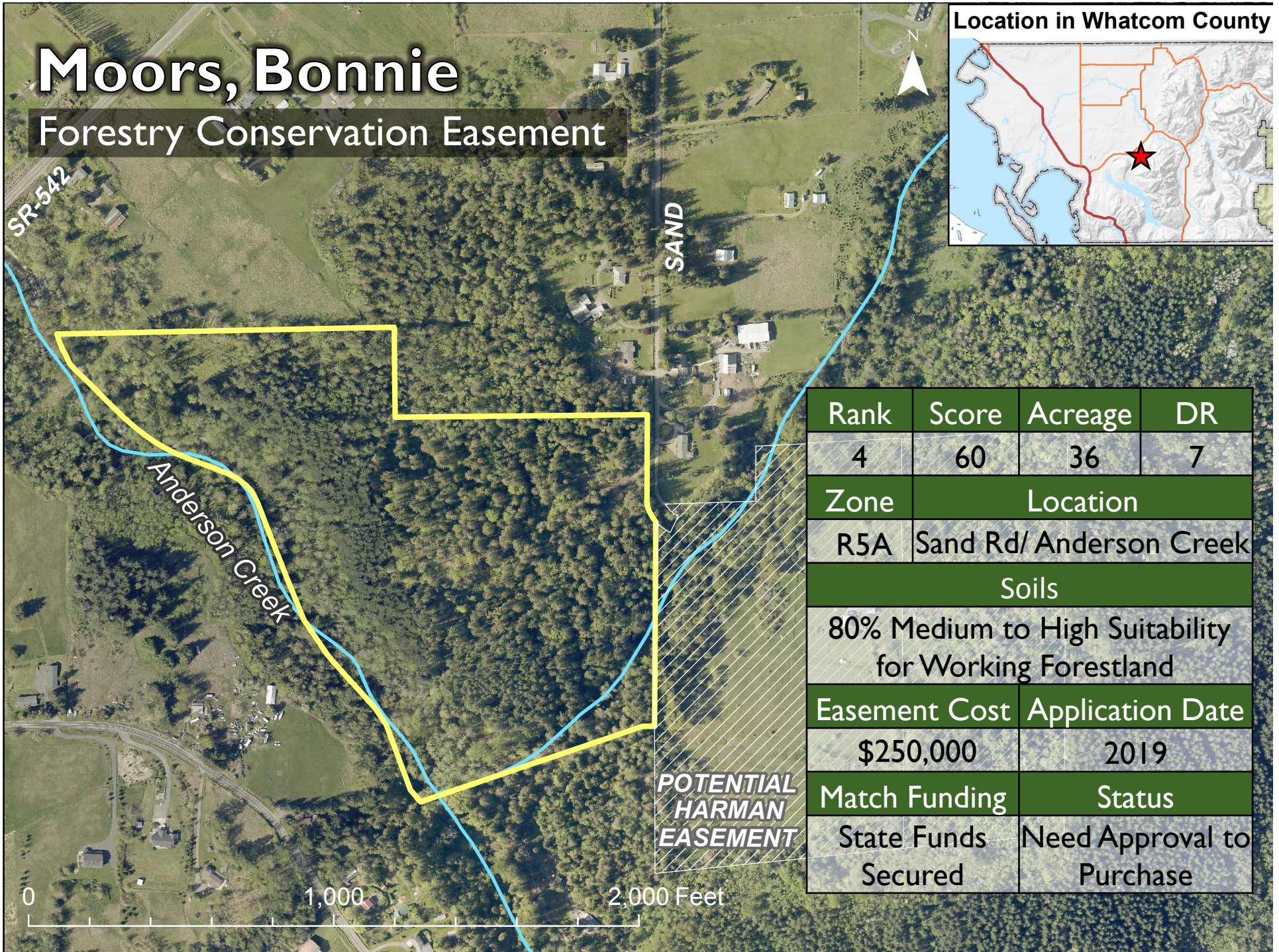
1,000

2,000 Feet



# Moors, Bonnie

## Forestry Conservation Easement



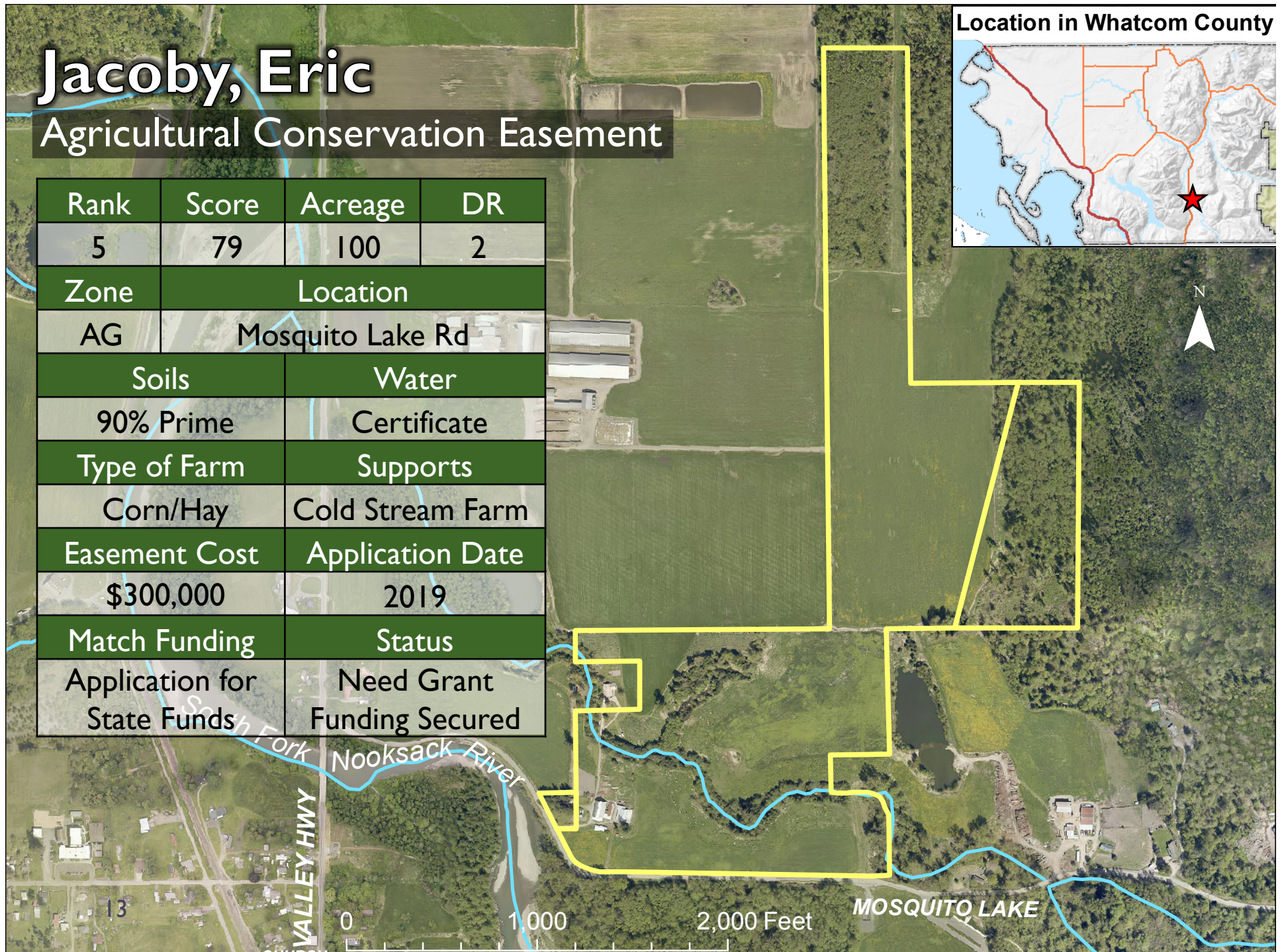


# Jacoby, Eric

## Agricultural Conservation Easement

Rank	Score	Acreage	DR
5	79	100	2
Zone	Location		
AG	Mosquito Lake Rd		
Soils		Water	
90% Prime		Certificate	
Type of Farm		Supports	
Corn/Hay		Cold Stream Farm	
Easement Cost		Application Date	
\$300,000		2019	
Match Funding		Status	
Application for State Funds		Need Grant Funding Secured	

### Location in Whatcom County

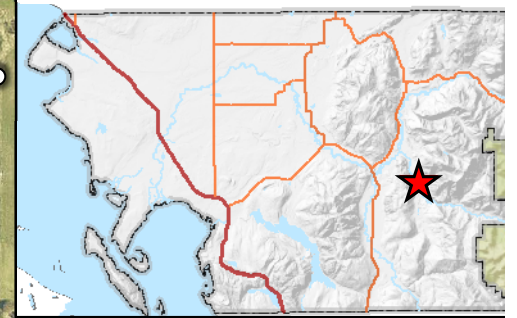




# Taylor, Kathy & Fuller, Melvin Jr.

## Ecological Conservation Easement

Location in Whatcom County



Rank	Score	Acreage	DR
6	66	15	1
Zone	Location		
R5A	Mosquito Lk Rd		
Habitat			
Nooksack River			
Easement Cost		Application Date	
\$100,000		2020	
Match Funding		Status	
Application for Federal Funds		Need Grant Funding Secured	

*Middle Fork  
Nooksack  
River*

MOSQUITO LK RD



0 500 1,000 Feet



# Loving, Gary

## Ecological Conservation Easement

Location in Whatcom County



DNR Land



To South Pass Rd



Breckenridge Creek  
Tributary

Rank	Score	Acreage	DR
7	50	20	I
Zone	Location		
RF	South Pass Rd		
Habitat			
Riparian forestland			
Easement Cost		Application Date	
\$75,000		2021	
Match Funding		Status	
Application for Federal Funds		Need Grant Funding Secured	

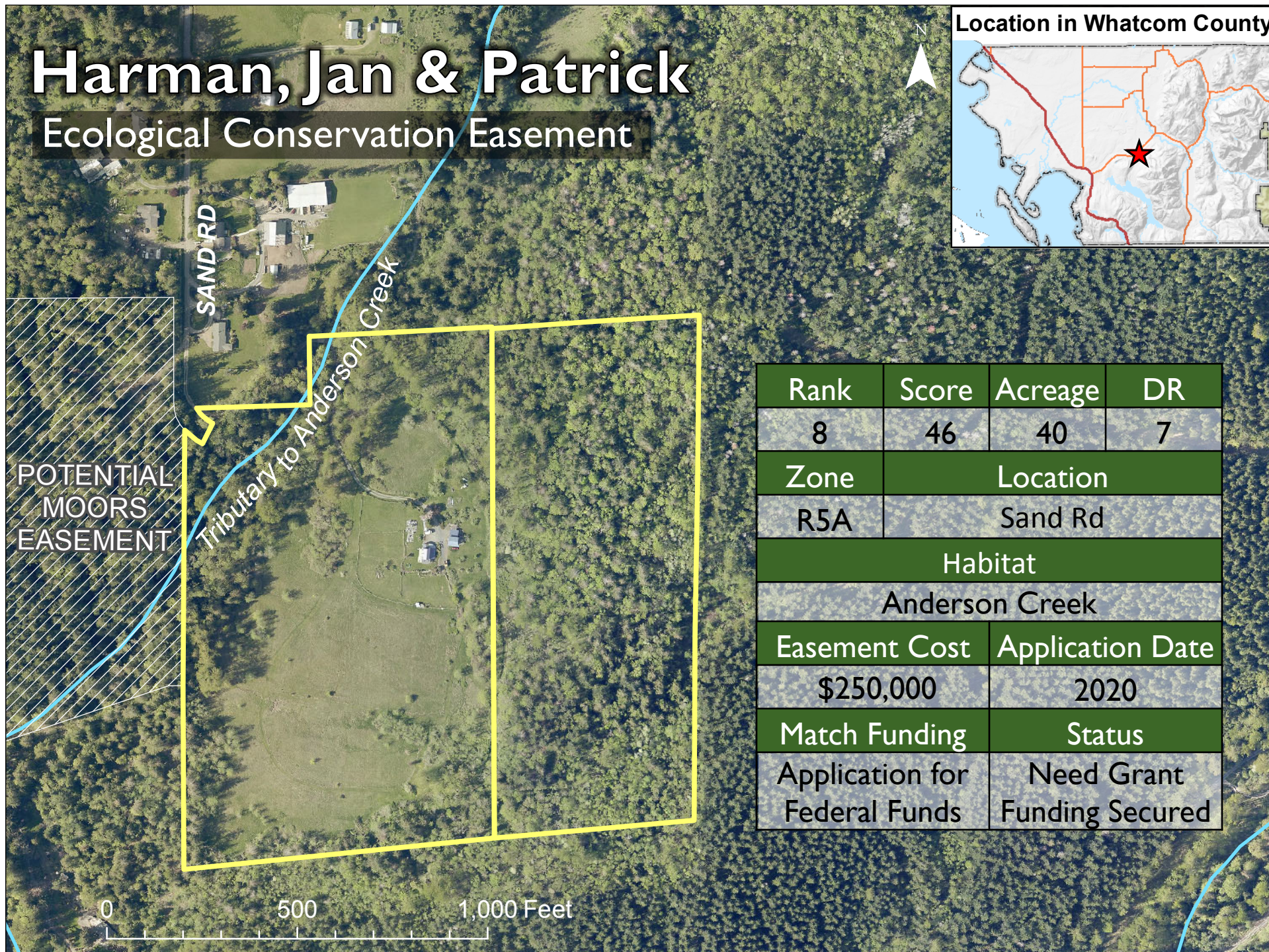


0 500 1,000 Feet



# Harman, Jan & Patrick

## Ecological Conservation Easement



Rank	Score	Acreage	DR
8	46	40	7
Zone	Location		
R5A	Sand Rd		
Habitat			
Anderson Creek			
Easement Cost		Application Date	
\$250,000		2020	
Match Funding		Status	
Application for Federal Funds		Need Grant Funding Secured	



# Newell, Brad

## Ecological Conservation Easement

Location in Whatcom County



Rank	Score	Acreage	DR
9	45	20	3
Zone	Location		
R5A	Enterprise Rd		
Habitat			
Wetlands enrolled in CREP			
Easement Cost		Application Date	
	\$100,000	2017	
Match Funding		Status	
Application for Private Funds		Need Grant Funding Secured	

0

500

1,000 Feet

ENTERPRISE RD



# Request



## ▶ AB2022-071

## ▶ Affirm CEP Oversight Committee Ranking

- Proceed with Acquisition of a Conservation Easement On:

1. Vander Veen	\$180,000	57 ac
2. Rethlefsen	\$395,000	49 ac
3. Savage	\$170,000	40 ac
4. Moors	\$250,000	36 ac
<hr/>		
Total	\$995,000	182 ac
Total After Grant Reimbursement	\$497,500	(\$2,733/ac)

CFF Balance as of 12/31/2021 ~\$2,300,000

# Thank you!



**Whatcom County**  
**Conservation Easement**  
**Program**



## **Conservation Easement Program Oversight Committee**

*Chair:* Paul Schissler

*Vice-Chair:* Sean D'Agnolo

*Committee Members:* Jen Glyzinski, Heather MacKay-Brown, Burr Neely

*Program Administrator:* Becky Snijder van Wissenkerke



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-072

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<b>File ID:</b>	AB2022-072	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/19/2022	<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>	02/08/2022	<b>Enactment #:</b>			

---

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

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

Request authorization for the County Executive to enter into a contract between Whatcom County and Aristo Healthcare Services to provide immediate staffing at COVID Isolation and Quarantine Facility overflow sites, in the amount of \$705,200

### **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 Contract



## MEMORANDUM

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Aristo Healthcare Services –  
COVID Isolation and Quarantine Overflow Facilities Operations Contract

**DATE:** January 19, 2022

Attached is a contract between Whatcom County and Aristo Healthcare Services for your review and signature.

▪ **Background and Purpose**

During the COVID-19 pandemic, it has been necessary for Whatcom County to implement actions that will mitigate the spread of the disease and provide basic services in support of public health for the community at large. In order to respond to people in need of isolation and quarantine, who have no other options to accomplish such, Whatcom County opened a COVID-19 Isolation and Quarantine Facility (IQF).

In January, 2022, the original IQF reached guest capacity and it became necessary to identify additional (overflow) IQF sites for guests who could not be accommodated at the original IQF. The Health Department does not have the capacity to staff the additional IQF site. This contract provides funding for Aristo Healthcare Services to provide immediate staffing for the provision of daily operations at County-designated IQF overflow sites.

▪ **Funding Amount and Source**

Total funding is estimated at \$705,200. Funding for this contract will vary depending on the number of employees assigned to the Facility, the position's hourly rate (including overtime, holiday, and weekend rates), various personnel accommodations (travel, meals, quarantine pay, etc.). Funding for this contract will either be through FEMA or American Rescue Plan Act grants. These funds will be included in the 2022 budget. Council approval is required as estimated funding will exceed \$40,000.

Please contact Cindy Hollinsworth, Communicable Disease & Epidemiology Manager at 360-778-6160 ([CHollins@co.whatcom.wa.us](mailto:CHollins@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 Administration / 851000 Administration	
Contract or Grant Administrator:		Cindy Hollinsworth	
Contractor's / Agency Name:		Aristo Healthcare Services	
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#: 97.036 or 21.027
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s): _____		FEMA Pending, assigned #202006004 or ARPA #202105020
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): _____	Emergency Declaration	Contract Cost Center: 660460
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>			
If YES, indicate exclusion(s) below:			
<input checked="" 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):  Varies depending on the number of staff provided and staff hourly rates.  Max \$705,200		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 contract provides funding for staffing and operations at COVID Isolation and Quarantine Overflow Facilities.			
Term of Contract:	3 Months	Expiration Date:	03/31/2022
Contract Routing:	1. Prepared by:	JT	Date: 01/11/2022
	2. Health Budget Approval:	KR/JG	Date: 01/18/2022
	3. Attorney signoff:	RB	Date: 01/14/2022
	4. AS Finance reviewed:	M Caldwell	Date: 1/19/22
	5. IT reviewed (if IT related):		Date:
	6. Contractor approved:		Date:
	7. Executive Contract Review:		Date:
	8. Council approved (if necessary):	AB2022-072	Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Aristo Healthcare Services**

Aristo Healthcare 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 12,  
Exhibit A (Scope of Work), pp. 13 to 14,  
Exhibit B (Compensation), p. 15 to 16,  
Exhibit C (Insurance), p. 17,  
Exhibit D (Special Terms & Conditions – federal contracts)

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 11<sup>th</sup> day of January, 2022, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of March, 2022.

The general purpose or objective of this Agreement is to provide funding for administrative oversight of operations at Whatcom County's COVID-19 Isolation and Quarantine Facility as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement is estimated at \$705,200. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

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

**CONTRACTOR:**

Aristo Healthcare Services  
4500 9<sup>th</sup> Avenue NE  
Seattle, WA 98105

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.

\_\_\_\_\_  
Chris Singh, CEO

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

\_\_\_\_\_  
Erika Lautenbach, Director Date

**Approved as to form:**

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

**Approved:**  
Accepted for Whatcom County:

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

**CONTRACTOR INFORMATION:**

**Aristo Healthcare Services**  
Chris Singh  
4500 9<sup>th</sup> Ave NE  
Seattle, WA 98105  
206-717-5156  
[chrisea@aristohealthcareservices.com](mailto:chrisea@aristohealthcareservices.com)



## 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. The County will provide a thirty-day written notification of any proposed extension.

#### **11.1 Termination for Default:**

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

#### **11.2 Termination for Reduction in Funding:**

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

#### **11.3 Termination for Public Convenience:**

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

### **Series 20-29: Provisions Related to Consideration and Payments**

#### **20.1 Accounting and Payment for Contractor Services:**

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

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the

Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

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

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

22.1 Withholding Payment:

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

23.1 Labor Standards:

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

***Series 30-39: Provisions Related to Administration of Agreement***

30.1 Independent Contractor:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

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

31.1 Ownership of Items Produced and Public Records Act:

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

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

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

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

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

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

31.2 Patent/Copyright Infringement:

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

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

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

32.1 Confidentiality:

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

33.1 Right to Review:

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

#### 34.1 Insurance:

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

##### 1. Commercial General Liability

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

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

##### 3. Business Automobile Liability

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

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

##### 4. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet

the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.

- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. **Insurance for Subcontractors.** If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 **Defense & Indemnity Agreement.** To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury,

for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

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

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

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

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

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

#### 35.1 Non-Discrimination in Employment:

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

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

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

#### 35.2 Non-Discrimination in Client Services:

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

#### 36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

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

37.1 Administration of Contract:

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

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

Cindy Hollinsworth, Communicable Disease & Epidemiology Manager  
Whatcom County Health Department

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:

Cindy Hollinsworth, Communicable Disease & Epidemiology Manager  
Whatcom County Health Department  
1500 N State Street  
Bellingham, WA 98225  
360-778-6160  
[CHollins@co.whatcom.wa.us](mailto:CHollins@co.whatcom.wa.us)

Chris Singh, CEO  
Aristo Healthcare Services  
4500 9<sup>th</sup> Ave NE  
Seattle, WA 98105  
206-717-5156  
[chrisea@aristohealthcareservices.com](mailto:chrisea@aristohealthcareservices.com)

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)**

**I. Background**

During the COVID-19 pandemic, it has been necessary for Whatcom County to implement actions that will mitigate the spread of the disease and provide basic services in support of public health for the community at large. In order to respond to people in need of isolation and quarantine, who have no other options to accomplish such, Whatcom County opened a COVID-19 Isolation and Quarantine Facility (IQF).

In January, 2022, the original IQF reached guest capacity and it became necessary to identify additional (overflow) IQF sites for guests who could not be accommodated at the original IQF. Aristo Healthcare Services has the capacity to provide immediate temporary, per-diem, temp-to-hire, and contract staffing services. This contract provides funding for Aristo Healthcare Services (Aristo) to provide staffing for daily operations at County-designated IQF overflow sites.

**II. Statement of Work**

Aristo will:

- A. Oversee daily operations and staffing at County-designated Isolation and Quarantine Facility Overflow (IQFO) sites. IQFO staff provided by Aristo will include a Supervisor supported by a Site Program Manager who will work with County representatives.
- B. The Supervisor will develop staffing schedules and provide on-site guidance to staff. The Supervisor will consult with County representatives on best practices for managing daily staff activities as well as any concerns or issues that may arise.
- C. Employ personal protective equipment (PPE) and other infection control practices at all times, as necessary.
- D. Ensure staff have fit-tested masks.
- E. Staffing patterns and shifts will consist of no less than one Aristo staff on-site, 24/7. Aristo will work with County representatives to ensure adequate staffing levels and shifts to ensure consistent coordination of activities, staff roles, supervision and other matters necessary to provide effective services and oversight of the IQFO sites.

All support staff must hold one or more of the following licenses and/or certifications:

- Home Care Aide - HM
- Health Care Assistant - HCA
- Certified Nursing Assistant - CNA
- Nursing Assistant Registered - NAR
- Medical Assistant Certified – MA-C
- Medical Assistant Registered – MA-R
- Community Health Worker – CHW
- Social Worker – SW

All Site Supervisors must hold one or more of the following licenses and/or certifications:

- Registered Nurse – RN
- Licensed Practical Nurse – LPN

- Licensed Independent Clinical Social Worker – LICSW
  - CMA – Certified Medical Assistant
- F. The Supervisor will coordinate work with WCHD representatives and other on-site contractors.
- G. Aristo will provide an on-site portable office to be utilized by Aristo staff to operate out of in order to minimize COVID-exposure. The County may replace Aristo's portable office with a Health Department provided one if it is able to do so.
- H. Aristo shall assume no responsibility or liability for IQFO sites, which shall be the sole and exclusive responsibility of the County and/or IQFO site property owners.
- I. Distribute food and incidental hygiene items provided by the County to guests.
- J. Provide and administer antigen testing kits and testing services to guests following protocols established by the WCHD.
- K. Follow all policies and procedures outlined by the County and work directly with the County on any concerns that may arise as a result.
- L. Following are duties expected to be provided by on-site Aristo personnel, but are not inclusive and may be altered as programming requires. These tasks are intended to ensure the functioning of the daily operations of IQFO sites. It is not expected that Aristo staff will provide any hands-on assistance with guests, but instead support guests with the following activities.
1. Assist with delivery and pick-up of daily meals to IQFO sites.
  2. Assist with linen exchanges and laundry services to IQFO sites.
  3. Assist with directing regular waste disposal from IQFO sites.
  4. Clean and sanitize vacant beds for the next guest, make beds with clean linens and provide towels and toiletries.
  5. Assist with communication connections between guests and their healthcare providers if a guest is unable to accomplish this independently.
  6. Guide and direct guests on appropriate behaviors that promote sufficient social distancing, isolation, quarantine, hygiene, and sanitation.
  7. Assist with on-site services that may include sanitation of guest areas and beds upon discharge of a guest, coordination with security practices and concerns, on-site healthcare provision, and access/egress of IQFO sites.
  8. Assist coordination with guests to access help for IQFO site issues that may include Wi-Fi access, repairs and maintenance, or communications problems that may arise.
  9. Assist with and initiate as needed scheduling of on-site staff at IQFO sites.
- M. Work with the County to adjust the budget, as necessary, in order to assure optimal staffing levels.
- N. Follow the CDC's Interim Guidance for Managing Healthcare Personnel with COVID infection or exposure:  
[https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Freturn-to-work.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Freturn-to-work.html)

The County will:

- A. Provide guidance and consultation to Aristo including best practices for managing daily staff activities as well as any concerns or issues that may arise.
- B. Provide infection control guidelines and PPE for use by all staff at the IQFO sites.
- C. Work with Aristo to ensure adequate staffing levels and shifts to ensure consistent coordination of activities, staff roles, supervision and other matters necessary to provide effective services and oversight of the IQFO sites.
- D. Ensure security services are on-site.
- E. Coordinate all personnel and contractors assigned to IQFO sites.
- F. The County or owners of IQFO sites will be responsible for general repairs and maintenance as well as providing for utility services.
- G. Provide food and incidental hygiene items to Aristo for distribution to guests.

- H. Provide Aristo with Whatcom County Health Department established, antigen testing protocols.
- I. Provide a manual or Policies and Procedures covering operational issues for IQFO sites, which will be located on-site and available as reference.
- J. Support Aristo and its employees in the performance of their duties to the greatest extent possible.
- K. In the event that the County determines that IQFO employee scheduled shifts need to be canceled or limited to less hours after the shift has started because guest accommodations at the IQFO sites are no longer necessary, the County will:
  - a. Pay Aristo a minimum of 4 hours per assigned employee if a shift is cancelled less than 8 hours prior to the start of a scheduled shift;
  - b. If the County limits the hours of a scheduled shift after the shift has started, Aristo may bill the County for 4 hours if the shift is canceled within the first 4 hours of the shift or 8 hours if the shift is canceled after the first 4 hours of the shift; or
  - c. Request that the employee(s) transfer to work their shift at the primary IQF.

**EXHIBIT "B"**  
**COMPENSATION**

**I. Source of Funding:** Funding for this contract is estimated at \$705,200. The budget for this contract is as follows:

Cost	Days	Hours/Day	Documentation Required with Invoice	Budget
January – Personnel + Portable Office				
Site Supervisor	21	24	Timesheets for the period	\$75,600
Support Staff				\$50,400
Site Manager		8 + on-call		\$13,440
Portable Office				\$6,300
February – Personnel + Portable Office				
Site Supervisor	28	24	Timesheets for the period	\$100,800
Support Staff				\$67,200
Site Manager		8 + on-call		\$17,920
Portable Office				\$8,400
March – Personnel + Portable Office				
Site Supervisor	31	24	Timesheets for the period	\$111,600
Support Staff				\$74,400
Site Manager		8 + on-call		\$19,840
Portable Office				\$9,300
Travel/Mileage			Reimbursement requests for allowable travel (including mileage) must include the name of staff member, dates of travel, starting point and destination, brief description of purpose. a. Ground transportation, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. b. Receipts for meals are not required. c. Meal and mileage rates may not exceed the U.S. GSA Domestic Per Diem Rates ( <a href="http://www.gsa.gov">www.gsa.gov</a> ), specific to location and must follow federal guidelines. d. Lodging at rates exceeding federal GSA may be procured after confirming through <a href="http://www.fedrooms.com">www.fedrooms.com</a> and keeping documentary evidence (e.g., screenshot including date/time) that there are no rooms available at per diem in Whatcom County.	\$150,000
Supplies/Equipment			Receipts or paid invoices	
TOTAL				\$705,200

Personnel + Portable Office Rates	Rates
Site Supervisor	\$150/hour
Support Staff	\$100/hour
Site Manager (Remote/On-Call)	\$80/hour
Portable Office	\$300/day

## II. Invoicing:

1. The Contractor shall submit itemized invoices by location on a monthly basis in a format approved by the County. Invoices must include timesheets and receipts, if applicable. The Contract number shall be included on all billings or correspondence. **Final invoices must be submitted by April 15, 2022.**
2. The Contractor shall submit invoices to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from 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.
4. Invoices must include the following statement, with an authorized signature and date:  
**I certify that the materials have been furnished, the services rendered, or the labor has been performed, as described on this invoice.**
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

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

**“Exhibit D”**  
(Special Terms and Conditions for Federally Funded Contracts)

The terms included in this agreement are a result of the grant funding requirements.

**1. LAWS**

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

**2. RECORDS MAINTENANCE**

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

The Contractor shall retain such records for a period of six (6) years following the date of final payment. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**3. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- c. *Withholding for unpaid wages and liquidated damages.* The Contractor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

**4. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

a. Clean Air Act

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Washington State Military Department, Federal Emergency Management Agency



(FEMA), and the appropriate Environmental Protection Agency Regional Office.

b. Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Washington State Military Department, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

**5. BYRD ANTI-LOBBYING AGREEMENT**

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

**“APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, Aristo Healthcare Services, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

---

Date

## **6. Prohibition on Contracting for Covered Telecommunications Equipment or Services**

- a. *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- b. *Prohibitions.*
  1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  2. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
    - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. *Exceptions.*

1. This clause does not prohibit contractors from providing—
  - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
  - i. Covered telecommunications equipment or services that:
    - a. Are *not used* as a substantial or essential component of any system; and
    - b. Are *not used* as critical technology of any system.
  - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d. *Reporting requirement.*

1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
2. The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
  - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- e. *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## 7. Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-065

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<b>File ID:</b>	AB2022-065	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/18/2022	<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>	02/08/2022	<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, for Organized Crime Drug Enforcement Task Force (OCDETF), in the amount of \$2,500.00

### 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 

Date: December 29, 2021

Subject: Agreement with the U.S. Department of Justice  
Organized Crime Drug Enforcement Task Forces (OCDETF)  
OCDETF Investigation / Strategic Initiative PA-WAW-0362 Operation Puffy Shirt

Enclosed for your review and signature is an original agreement between Whatcom County and the U.S. Department of Justice Organized Crime Drug Enforcement Task Forces (OCDETF).

**Background and Purpose**

This agreement provides for reimbursement of overtime of Whatcom County Sheriff's Office Deputies engaged in Federal Organized Crime Drug Enforcement Task Force investigations.

**Funding Amount and Source**

\$2,500 from the U.S. Department of Justice / DEA

**Differences from Previous Contract**

There is no difference from the previous year's contract.

Please contact Undersheriff Doug Chadwick at extension 6618 if you have any questions or concerns regarding the terms of this agreement.

Thank you.

enclosure

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	35 Sheriff's Office
Division/Program: (i.e. Dept. Division and Program)	3520 Bureau of LE & Investigations / 352070 Drug Task Force
Contract or Grant Administrator:	Undersheriff Doug Chadwick
Contractor's / Agency Name:	U.S. Department of Justice OCEETF
Is this a New Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
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: 1003521008	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 2,500.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ 2,500.00	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: _____	
Agreement provides for reimbursement of Sheriff's Office overtime in connection with U.S. Department of Justice Organized Crime Drug Enforcement Task Force (OCEETF) investigation.	
Term of Contract: 10/1/21	Expiration Date: 9/30/22

Contract Routing:

- |   |                |
|---|----------------|
| 1. Prepared by: Donna Duling                  | Date: 12/29/21 |
| 2. Attorney signoff: Approved via email BW    | Date: 12/29/21 |
| 3. AS Finance reviewed: Approved via email BB | Date: 1/4/21   |
| 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: _____    |



**ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES**  
**FY 2022 Agreement**  
**FOR THE USE OF THE STATE OR LOCAL**  
**OVERTIME AND AUTHORIZED EXPENSE/STRATEGIC INITIATIVE PROGRAM**

DUNS #: 060044641  
Federal Tax Identification #: 91-6001383

EXO USE Only
DCN: <u>Y-32-</u>

Amount Requested: <small>Amount requested should match the amount calculated on the Initial Funding Form, Page 2.</small>
<u>\$ 2,500.00</u>
Number of Officers Listed: _____

OCDETF Investigation / Strategic Initiative Number: <u>PA-WAW-0362</u>
Operation Name: <u>Operation Puffy Shirt</u>

From: <u>October 1, 2021</u> <small>Beginning Date of Agreement</small>
To: <u>September 30, 2022</u> <small>Ending Date of Agreement</small>

Federal Agency Investigations: Number: <u>RL-21-0012</u>
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State or Local Organization
Narcotics Supervisor: <u>Lieutenant Scott Huso</u>
Telephone Number: <u>(360) 778-6709</u>
E-mail Address: <u>shuso@co.whatcom.wa.us</u>

Rural Designation
Rural*    Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Operation Zip Code(s): <u>98226</u>

State or Local Organization Name: <u>Whatcom County Sheriff's Office</u>
Address to receive OCDETF paperwork (no PO Boxes): Attention:** <u>Donna Duling</u> <u>311 Grand Ave</u> <u>Bellingham, WA 98225</u>

Sponsoring Federal Agency(ies): <u>DEA</u>
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Sponsoring Federal Agency Group/Squad Supervisor: <u>Jason E Webber, RAC</u>
Telephone Number: <u>(571) 387-3292</u>
E-mail Address: <u>jason.e.webber@usdoj.gov</u>

Please provide the name, telephone number, and email address for the **financial staff person at the State or Local Organization, who is directly responsible for the billing on the Reimbursement Request:**

Name: Donna Duling - Financial Accountant  
Telephone Number: (360) 778-6611  
E-mail Address: SheriffAccounting@co.whatcom.wa.us

Agreement (FY22), Page 1

\*This agreement can be classified as rural if the state & local agency's operating address or the location of the investigation produces a "Yes" response to both the CMS and FORHP Programs on the following website - <https://www.ruralhealthinfo.org/am-i-rural>. **NOTE** - ONLY include one zip code in the Rural designation box if case is classified as Rural.

\*\*Include the name of the person the form should be mailed to.



**ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES**  
**FY 2022 Agreement Initial Funding Form**  
FOR THE USE OF THE STATE OR LOCAL  
OVERTIME AND AUTHORIZED EXPENSE/STRATEGIC INITIATIVE PROGRAM

OCDETF Case #: PA-WAW-0362

Amount Requested: \$ 2,500.00

*This amount should be entered on Page 1 of the Reimbursable Agreement.*

*Please note: The amount requested should cover your active investigation plan from the agreement start date. Proactive funding analysis will be conducted to determine the need for additional funds throughout the life of the agreement.*

**Agreement Activity:** *(Please check all that apply)*

☒ Surveillance    ☒ Takedown    ☐ Trial/Court    ☐ Wire: ☐ Approved ☐ Pending    ☐ Other

*If Other, please describe the type of investigative activity the State & Local Agency will be participating in:*

**Factors to Consider when Determining the Initial Agreement Amount:** *(Required)*

Average Officer Overtime Rate:

\$ 70.00

Estimated overtime hours for your active  
investigation plan, from the agreement start date:

Prior year agreement spending,  
if any:

\$ 14,867.40

*Please provide a brief explanation on how the initial funding amount was determined, if other factors were considered:*

The U.S. Department of Justice typically provides an initial allocation of \$2,500 for the Sheriff's Office to begin each OCDETF case. After the initial funding and work on the case begins, additional allotments are approved as needed.

This Agreement is between the above named State or Local Law Enforcement Organization and the Organized Crime Drug Enforcement Task Forces (OCDETF) Program. This Agreement shall be effective when signed by an authorized State or Local Organization official, the sponsoring Federal Agency Special Agent-In-Charge, the sponsoring Agency Regional OCDETF Coordinator, the Assistant United States Attorney Regional OCDETF Director, and the OCDETF Executive Office.

1. It is agreed that the State or Local Law Enforcement officers named on this Agreement will assist in OCDETF Investigations, Strategic Initiatives and prosecutions as set forth in the Organized Crime Drug Enforcement Task Forces State or Local Overtime and Authorized Expense/Strategic Initiative Programs, Policies and Procedures Manual, Fiscal Year 2022.
2. No individual Agreement with a State or Local organization may exceed \$25,000, and the cumulative amount of OCDETF State and Local overtime monies that may be expended on a single OCDETF Investigation or Strategic Initiative in a single fiscal year may not exceed \$50,000 without express prior approval from the OCDETF Executive Office. The OCDETF Executive Office will entertain requests to exceed these funding levels in particular cases. Please submit a written request including justification approved by the AUSA Regional Director to the OCDETF Budget Officer/Deputy Budget Officer when seeking to exceed the above stated funding levels.
3. Each Reimbursable Agreement will be allowed no more than five (5) modifications per year. In addition, if the funds for a particular Agreement are completely deobligated with the intention of closing that Agreement, it will not count as a modification for purposes of this policy. These amendments must be transmitted by a memorandum approved and signed by the AUSA Regional OCDETF Director or designee for the region and sent to the OCDETF Executive Office.
4. If an Agreement does not have any activity during the last ninety (90) days, the funds shall automatically be deobligated. The OCDETF Executive Office will assist with the monitoring of the aging Agreements. Further, if a State or Local Organization indicates that it is no longer performing work under a particular Agreement, the State or Local Overtime and Authorized Expense/Strategic Initiative Programs, Policies and Procedures Manual requires that a modification memorandum identifying the amount to be deobligated be submitted to the OCDETF Executive Office as soon as possible after determining that no work is being performed.
5. The State or Local Law Enforcement Organization agrees to provide experienced drug Law Enforcement officers who are identified in this Agreement to work on the specified OCDETF Investigation or Strategic Initiative. Any change in Law Enforcement officers assigned must be agreed to by all approving officials.

6. Officers who are not deputized shall possess no Law Enforcement authority other than that conferred by virtue of their position as a commissioned officer of their parent Agency.
7. Officers who are deputized may possess Federal Law Enforcement authority as specified by the Agency affording the deputation.
8. Any State or Local officers assigned to an OCDETF Investigation or Strategic Initiative in accordance with this Agreement are not considered Federal employees and do not take on the benefits of Federal employment by virtue of their participation in the Investigation or Strategic Initiative.
9. OCDETF and the sponsoring Federal Law Enforcement Agency(ies) for the approved OCDETF Investigation or Strategic Initiative will provide to the assigned State or Local officers the clerical, operational and administrative support that is mutually agreed to by the parties in this Agreement.
10. Officers assigned to OCDETF Investigations or Strategic Initiatives should work full-time on the Investigation(s) or Strategic Initiative(s) in order to be paid overtime. In order to satisfy the "full-time" expectation, a Law Enforcement officer should work forty (40) hours per week or eight (8) hours per day on a single or multiple OCDETF Investigation(s) or Strategic Initiative(s). Any established exceptions or waivers to this definition shall be requested by the Regional Coordination Group and attached as Addendum A to the Agreement. [The parent State or Local Organization must pay the base salary of its officers. In the event officers must work overtime on an OCDETF Investigation or Strategic Initiative, the OCDETF Program will reimburse the parent State or Local Law Enforcement Organization for a limited amount of those overtime costs.] The Organization is responsible for paying its Law Enforcement officer(s) for their overtime, travel and per diem expenses. To ensure proper and complete utilization of OCDETF overtime and expense allocations, reimbursement claims must be submitted monthly on the OCDETF Reimbursement Request Form. The OCDETF Executive Office may refuse payment on any reimbursement request that is not submitted to the OCDETF Regional Coordination Group within thirty (30) days of the close of the month in which the overtime was worked.
11. It is the responsibility of the State or Local Organization to retain and have available for inspection sufficient supporting documentation for all regular hours and overtime hours worked towards a specific OCDETF case. Officers' timesheets must reflect work towards a specific OCDETF case and must be reviewed and signed by an authorized State or Local official.
12. Analysis of reimbursement claims by the Regional Coordination Group may result in a modification of the obligation of funds contained within this Agreement as well as the time period covered. The Organization affected by any such modification will receive a memo notifying them of the changes.



13. Overtime payments, including all other non-OCDETF Federal sources (such as Safe Streets, HIDTA, IRS, ICE, FEMA, etc.) may not, on an annual per person basis, exceed 25% of the current approved Federal salary rate in effect at the time the overtime is performed. The State or Local Organization is responsible for ensuring that this annual payment is not exceeded. The Executive Assistant/OCDETF Program Specialist will monitor these payments via MIS and communicate to the Federal Agency Regional OCDETF Coordinators who provide status updates to any officer approaching the threshold.
14. The overtime log must be attached to the reimbursement request when submitting the monthly invoices. The Sponsoring Federal Agency Supervisory Special Agent and the State or Local official authorized to approve the Reimbursement Request must certify that only authorized expenses are claimed, the regular hours requirement is satisfied, and that overtime has not exceeded 25% of the current Federal salary rate in effect at the time the overtime was worked.
15. Under no circumstances will the State or Local Organization charge any indirect costs for the administration or implementation of this Agreement.
16. The State or Local Organization shall maintain complete and accurate records and accounts of all obligations and expenditures of funds under this Agreement for a period of six (6) years and in accordance with generally accepted accounting principles to facilitate inspection and auditing of such records and accounts.
17. The State or Local Organization shall permit examination and auditing by representatives of the OCDETF Program, the sponsoring Federal Agency(ies), the U.S. Department of Justice, the Comptroller General of the United States, and/or any of their duly-authorized agents and representatives, of any and all records, documents, accounts, invoices, receipts, or expenditures relating to this Agreement. Failure to provide proper documentation will limit State or Local Law Enforcement Organizations from receiving OCDETF funding in the future.
18. The State or Local Organization will comply with Title VI of the Civil Rights Act of 1964 and all requirements applicable to OCDETF Agreements pursuant to the regulations of the Department of Justice (see, e.g., 28 C.F.R. Part 42, Subparts C and G; 28 C.F.R. 50.3 (1991)) relating to discrimination on the grounds of race, color, sex, age, national origin or handicap.
19. This Agreement may be terminated by any of the parties by written notice to the other parties ten (10) business days prior to termination. Billing for outstanding obligations shall be received by OCDETF within thirty (30) days of the notice of termination.

20. The Debt Collection Improvement Act of 1996 requires that most payments made by the Federal government, including vendor payments, must be made by electronic funds transfer (EFT). In accordance with the act, all OCDETF reimbursement payments will be issued via EFT. Participants are required to register in SAM.gov to receive reimbursements; registration information will be provided upon request. In certain circumstances the OCDETF Executive Office may make exceptions for Organizations that are unable to accept this form of payment, however, such Organizations must include written justification in the addendum of each new Agreement.
21. All changes made to the original Agreement must be approved by the OCDETF Executive Office and initialed by the Executive Assistant/OCDETF Program Specialist of the Regional Coordination Group making the revision. The AUSA Regional OCDETF Director or designee must initial all funding changes.
22. The Regional Coordination Group is responsible for identifying and implementing any additional policy requirements, as needed, for its specific region. Those regional policies will be documented in the Addendum B and attached to the approved Agreement. The Organizations are agreeing to adhere to these additional requirements and must have written approval by the Regional Coordination Group for any exceptions to the regional policies.
23. Restrictions: Fringe benefits (such as retirement, FICA, or other expenses) are NOT to be included in overtime payment. Auxiliary educational benefits are also NOT to be included in overtime payment. Reimbursement of overtime payment is based solely on the authorized overtime rate of each participating officer listed in the Agreement. Under no circumstances may a State or Local agency include any administrative fees for the processing of overtime. Additionally, officers are not eligible for reimbursement of compensation time earned in lieu of overtime payment. OCDETF will only reimburse an actual dollar (\$) amount paid to the officer for overtime worked, any additional benefit (including compensation time) will NOT be reimbursed.

This Agreement is not a contract or obligation to commit Federal funds in the maximum amounts projected. Funding allocations for the time period set forth and agreed to herein represent projections only and are based upon consultation between the sponsoring Federal Agency and the State or Local Law Enforcement Organization. They are, therefore, subject to modification by OCDETF based upon the progress and needs of the OCDETF Investigation or Strategic Initiative. Additionally, resources are contingent upon the availability of funds per the approval and signature of the OCDETF Executive Office obligating authority. The OCDETF Executive Office will approve and certify that all the terms and conditions of the Agreement have been met.

Each Agreement must be approved and signed by a State or Local Law Enforcement Organization official who has supervisory authority over, and is authorized to assign, the participating Law Enforcement officers to the OCDETF Investigation or Strategic Initiative.

Approved By: Scott Huso Lieutenant 1/7/22  
*Authorized State or Local Official Title Date*  
Scott Huso  
*Print Name*

Approved By: \_\_\_\_\_  
*Sponsoring Federal Agency Special Agent in Charge or Designee Date*  
\_\_\_\_\_  
*Print Name*

Approved By: \_\_\_\_\_  
*Sponsoring Agency Regional OCDETF Coordinator Date*

Approved By: \_\_\_\_\_  
*Assistant United States Attorney Regional OCDETF Director/Program Specialist Date*

Funds are encumbered for the State or Local Organization overtime costs and authorized expense/Strategic Initiative Programs specified above. **Subject to availability of funds.**

Approving Official: \_\_\_\_\_  
*OCDETF Executive Office Date*

**WHATCOM COUNTY:**

**Recommended for Approval:**

  
\_\_\_\_\_  
Bill Efo, Sheriff

01/18/22  
Date

**Approved as to form:**

Approved via email Bw/DO 12/29/21  
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 \_\_\_\_\_.



## ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

### STATE OR LOCAL LAW ENFORCEMENT OFFICERS ASSIGNED TO PARTICIPATE IN THE STATE AND LOCAL OVERTIME AND AUTHORIZED EXPENSE/STRATEGIC INITIATIVE PROGRAMS

State or Local Organization: Whatcom County Sheriff's Office

OCDETF Investigation / Strategic Initiative Number: PA-WAW-0362

The Law Enforcement officers listed below will assist with the above identified OCDETF Investigation or Strategic Initiative. Any modification of the list of Law Enforcement officers must be agreed to in writing by all of the parties to this Agreement, made a part of the Agreement, and forwarded to the OCDETF Executive Office.

	<u>NAME</u>	<u>TITLE/RANK</u>	<u>DOB</u>
1.	Allen, James	Deputy	7/31/91
2.	Assink, Grant	Deputy	3/29/84
3.	Burks, Doug	Sergeant	12/11/68
4.	Chambers, Dane	Deputy	3/23/88
5.	DeZeeuw, Tyler	Deputy	1/15/88
6.	Hester, Colin	Deputy	8/15/89
7.	Heystek, Lucas	Deputy	10/21/89
8.	Ingermann, Neil	Deputy	5/4/93
9.	Leach, Trent	Deputy	3/24/89
10.	Nyhus, Jason	Deputy	12/28/71



**OCDETF Officer Form (Continued )**State or Local Organization: Whatcom County Sheriff's OfficeOCDETF Investigation / Strategic Initiative Number: PA-WAW-0362

The Law Enforcement officers listed below will assist with the above identified OCDETF Investigation or Strategic Initiative. Any modification of the list of Law Enforcement officers must be agreed to in writing by all of the parties to this Agreement, made a part of the Agreement, and forwarded to the OCDETF Executive Office.

<u>NAME</u>	<u>TITLE/RANK</u>	<u>DOB</u>
11. Osborn, DJ	Deputy	8/16/76
12. Oswalt, Brian	Deputy	11/22/70
13. Paz, Anthony	Sergeant	9/27/75
14. Pike, Justin	Deputy	6/26/83
15. Rathbun, Ryan	Deputy	3/8/71
16. Strand, Erik	Deputy	5/12/80
17. Streubel, Stanley	Deputy	2/22/79
18. Taddonio, Frank Michael	Deputy	10/7/79
19. VandenBos, Chris	Deputy	7/31/91
20. Walcker, Todd	Detective	2/13/74
21. Weatherby, Nick	Deputy	1/14/86
22. Wood, Ben	Deputy	4/15/80
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		
32.		

**ADDENDUM A**  
**OCDETF Pacific Region**

**DEFINITION OF "FULL-TIME PARTICIPATION"**

The OCDETF State and Local Overtime (SLOT) Program is designed to reimburse only overtime costs incurred by officers working full-time on OCDETF cases. In order to comply with the requirement that an officer/agent work full-time, the officer/agent must:

Be assigned to work on OCDETF matters full-time and work forty (40) hours per week on a single OCDETF investigation or multiple OCDETF investigations. Overtime in excess of 40 hours will then be reimbursed.

If the officer/agent is not exclusively assigned to work full-time on OCDETF matters, then overtime may be reimbursed if the officer/agent worked eight (8) hours regular\* time in a given day on the OCDETF investigation before claiming any overtime. Overtime in excess of eight (8) hours regular\* time will then be reimbursed.

**EXCEPTIONS TO THE "FULL-TIME PARTICIPATION RULE"**

**PART TIME -**

If an officer/agent works more than eighty (80) hours regular\* time per month on OCDETF matters, then the officer/agent will be reimbursed for needed overtime that month (no exemption letter needed).

**LIMITED PART TIME**

If an officer works between one (1) and seven (7) hours regular\* time per month on OCDETF matters, no more than sixteen (16) hours of overtime will be reimbursed that month (no exemption letter needed).

Occasionally dedicated OCDETF resources cannot handle a particular enforcement action, such as an unexpected surveillance; or unforeseen circumstances require additional non-federal resources and the investigation would suffer without those additional resources. In those circumstances, more than sixteen (16) hours of overtime may be reimbursed for that month, but will require an exemption letter. This letter must be submitted with the monthly Reimbursement Request. The letter must 1) explain/provide justification for the unforeseen circumstance(s) which occurred that month; 2) list the names of each officer(s)/agents(s) for whom this circumstance pertains; and 3) state that the sponsoring federal agency supervisor in the district where the investigation is being conducted approves of the request.

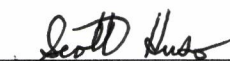
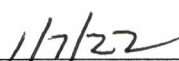
**ZERO PARTICIPATION (Zero Regular Hours Worked)**

If an officer/agent works zero (0) regular hours on OCDETF matters during the month, the officer/agent will be limited to being reimbursed no more than sixteen (16) hours overtime for that month (an exemption letter is required as described above, plus an explanation of why zero (0) regular hours were worked).

In very rare, unforeseen circumstances, where over sixteen (16) hours of overtime reimbursement are being requested, an additional explanation of the zero regular hours worked must be added to the exemption letter. The request for over sixteen (16) hours of overtime reimbursement should be limited to extremely rare circumstances.

All requests for overtime for matters where unforeseen circumstances are claimed will be reviewed for final approval by the sponsoring federal agency Pacific Region OCDETF Coordinator (or his/her designee) and the Pacific Region OCDETF Director (or his/her designee).

**Acknowledged:**

	Lieutenant	
_____ Authorized State or Local Official	_____ Title	_____ Date

(Name and Signature)

*\*A minimum of 1 (one) regular hour must be worked on the OCDETF investigation for which the overtime is being billed for reimbursement.*

**ADDENDUM B**  
**OCDETF Pacific Region**

1. Authorization to expend funds under the Agreement For The Use of State and Local Overtime ("Agreement") is effective *only* after it has been *approved and funded* for a specific amount by the OCDETF Regional Coordination Group ("RCG"). Mere submission of an Agreement *does not* authorize an expenditure of any funds. The amount requested may be reduced to a lower amount by the RCG. When submitting the agreement, a mailing address for the State or Local Agency Narcotics Supervisor must be provided (if different from the cover page of the Agreement):

**State or Local Agency Narcotics Supervisor:** Scott Huso, Lieutenant

**Address:** 311 Grand Ave

Bellingham, WA 98225

2. Participation by additional officer(s) requires the submission to the Sponsoring Federal Agency Coordinator of a Notification of Change in Officer Form, which identifies the new officers.
3. This agreement *does not* authorize any expenditures beyond the funds allocated by the RCG to this investigation. This Agreement *does not* require the RCG to pay for any overtime worked without sufficient, previously authorized funding.
4. Reimbursement for travel and per diem costs for state and local officers under this agreement is the responsibility of the sponsoring federal agency.
5. OCDETF State and Local *Overtime* funds are *not* to be used for:
- a. equipment procurement
  - b. agency operational subsidies
  - c. purchases of evidence
  - d. payments to confidential informants
  - e. reimbursements to anyone other than sworn law enforcement officers.
  - f. reimbursement of compensation time earned in lieu of overtime payment
6. All overtime reimbursement requests must be submitted to the RCG within *thirty (30) days of the close of the month in which the overtime was worked.*
7. It is the responsibility of your agency to report cumulative overtime for each officer on the Officer Overtime Log, which may not exceed **\$19,372.00** from any Federal source this fiscal year.

**Acknowledged:**

Scott Huso  
Authorized State or Local Official  
(Name and Signature)

Lieutenant

Title

1/7/22  
Date



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-075

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<b>File ID:</b>	AB2022-075	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/24/2022	<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>	02/08/2022	<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 City of Bellingham to provide winter shelters during severe weather emergencies

### 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, Addendum A - License and Emergency Authorization to Use City Facilities





## MEMORANDUM

**TO:** Whatcom County Council  
**FROM:** Erika Lautenbach, Director  
**RE:** City of Bellingham – Severe Weather Shelter Memorandum of Understanding (MOU)  
**DATE:** January 24, 2022

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Attached is an MOU between Whatcom County and City of Bellingham for your review and signature.

- **Background and Purpose**

This MOU outlines a commitment between the City of Bellingham (COB) and Whatcom County (WC) to provide an additional daytime (COB) and nighttime (WC) low-barrier shelter options for those without homes and for those that are restricted or not comfortable utilizing other shelter options, during severe weather emergencies and as determined by the Health Department.

- **Funding Amount and Source**

Each agency is responsible for covering all operating costs of their respective shelter. In the event that WC utilizes a COB-owned facility, COB will not charge WC with lease or utility costs. 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 Erika Lautenbach, Director at 360-778-6005 ([ELautenb@co.whatcom.wa.us](mailto:ELautenb@co.whatcom.wa.us)), if you have any questions or concerns regarding this Agreement.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing	
Contract or Grant Administrator:		Ann Beck	
Contractor's / Agency Name:		City of Bellingham	
Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/> No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		
Does contract require Council Approval?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If No, include WCC:
Already approved? Council Approved Date:		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	If yes, grantor agency contract number(s):		CFDA#:
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?		Contract Cost Center:	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, RFP and Bid number(s):		
Is this agreement excluded from E-Verify?		No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional.			
<input type="checkbox"/> Contract work is for less than \$100,000.		<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days.		<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).		<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</li> </ol>	
\$ 0			
This Amendment Amount:			
\$			
Total Amended Amount:			
\$			
Summary of Scope: This Agreement outlines commitments between the City of Bellingham and Whatcom County to operate severe winter shelters for those without homes and for those that are restricted or not comfortable utilizing other shelter options.			
Term of Contract:	3 Months	Expiration Date:	03/31/2022
Contract Routing:	1. Prepared by:	COB	Date: 1/24/2022
	2. Attorney signoff:	RB	Date: 01/24/2022
	3. AS Finance reviewed:	M Caldwell	Date: 01/24/2022
	4. IT reviewed (if IT related):		Date:
	5. Contractor approved:		Date:
	6. Submitted to Executive:		Date:
	7. Council approved (if necessary):	AB2022-075	Date:
	8. Executive signed:		Date:
	9. Original to Council:		Date:

**MEMORANDUM OF UNDERSTANDING FOR  
SEVERE WEATHER SHELTER / WINTER RESPONSE 2022  
CITY OF BELLINGHAM - WHATCOM COUNTY**

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington (hereinafter the "City"), with offices at 210 Lottie Street, Bellingham, Washington 98225, and **WHATCOM COUNTY**, a political subdivision of the State of Washington, acting through the Whatcom County Health Department, (hereinafter the "County"), located at 509 Girard Street, Bellingham, Washington 98225, in consideration of the mutual covenants herein, do agree as follows:

The Mayor and County Executive acknowledge that this Memorandum of Understanding (MOU) covers Winter 2022 (January, February, and March). The City and the County will reconvene following these winter months and discuss and make decisions on how future severe weather events are covered.

- 1. Summary of Commitments by the Mayor and the County Executive:** In the event of dangerously severe weather in the forecast, the City of Bellingham and Whatcom County commits to providing an additional daytime and nighttime low-barrier (as opposed to "no barrier") shelter options for those without homes and for those that are restricted or not comfortable utilizing other shelter options. These shelters are in addition to Lighthouse Mission Ministries' Base Camp facility and the Northwest Youth Services Young Adult Winter Shelter, which are available to serve most of our unhoused population. During a severe weather emergency, as defined by the Whatcom County Health Department and outlined below, the City commits to opening and operating an overnight Severe Weather Shelter. These additional options are not intended to provide social services, but rather serve as a life-saving intervention in the event of dangerous weather conditions.
- 2. Criteria for Activating Warming Center/Severe Weather Shelter:** The decision to open the additional warming shelters will rest with the Whatcom County Health Department (WCHD). The Whatcom County Guiding Assumptions are attached.

The decision to "Go Operational" will be made by the WCHD Director by 10 am, two (2) days before going operational.

Ann Beck, Human Services Supervisor, or designee, will check the NOAA weather forecast to confirm with the WCHD Director, if thresholds trigger the necessity for Center/Shelter. If yes, Ann Beck will contact Katy Sullivan and Tara Sundin, COB Staff, and copy the Mayor and County Executive's offices.

**3. Daytime Warming Center:**

Lead Agency: City of Bellingham

Hours of Operation: 8:30 am to 7:00 pm

Location: Bellingham Public Library. The Downtown Library is centrally located and open to all. During a severe weather event, the Library Lecture Room would be cleared of scheduled activities and made available to the City as an emergency space. The operation of the Warming Center would be independent of library services in the rest of the building and operate regardless of the Library's normal scheduled hours of operation.

Staffing Model: The Center will be staffed by volunteers. Volunteer training, scheduling, supply purchase/delivery, garbage, custodial and other services provided by COB staff.

**4. Overnight Severe Weather Shelter:**

Lead Agency: Whatcom County

Hours of Operation: 7:00 pm to 9:00 am

Location: Depot Market Square.

Staffing Model: Overnight shelter will be fully staffed and operated by trained volunteers. Volunteers will be coordinated by an entity contracted by Whatcom County [currently in discussion with Serenity Outreach Services (SOS)] and there will be one responsible Lead Supervisor on-site at all times. If no entity is hired, Whatcom County employees will staff the shelter.

- 5. Cost Sharing:** The designated Lead Agency is responsible for covering all operating costs of their respective shelter. In the event the County wishes to utilize a City-owned facility and the City agrees, the City shall not charge the County a use or lease fee nor will it charge for water, sewer, and electricity. Whatcom County Facilities staff will provide custodial services and handle bathroom maintenance arrangements.



**6. Code of Conduct:** To the degree possible, the parties will attempt to have a similar Code of Conduct, including enforcement procedures, for guests. Subject to modification by Lead Agency, the following is anticipated as of the date of this Agreement.

- Wear a mask and maintain social distancing.
- No consumption/sales of drugs or alcohol anywhere on the premises.
- No brandishing of weapons.
- No arguing with or verbally abusing other guests/staff/volunteers.
- Smoke outside in smoking areas only; no smoking in the building or in the doorways.
- Leave with all belongings by 7:00 pm (or 9:00 am). No loitering on property after hours.
- Be kind and courteous to others in this shared space.

The parties hereby agree to the above outlined roles and responsibilities.

***CITY OF BELLINGHAM:***

\_\_\_\_\_  
Seth Fleetwood, Mayor

\_\_\_\_\_  
Date

***WHATCOM COUNTY:***

\_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive

\_\_\_\_\_  
Date

***APPROVED AS TO FORM:***

Approved by email RB/JT  
\_\_\_\_\_  
Royce Buckingham, Senior Civil Deputy Prosecutor

01/24/2022  
\_\_\_\_\_  
Date

***APPROVED AS TO PROGRAM:***

Approved by email AB/JT  
\_\_\_\_\_  
Ann Beck, Human Services Supervisor

01/24/2022  
\_\_\_\_\_  
Date

***APPROVAL AS TO DEPARTMENT:***

\_\_\_\_\_  
Erika Lautenbach, Director

\_\_\_\_\_  
Date



## SEVERE WEATHER SHELTERS

### Guiding Assumptions:

1. The Health Department Director will determine when severe cold weather conditions pose life-threatening circumstances and severe weather shelter(s) should open. The guidelines below will be used in the decision-making process.
2. The temperature threshold of 28°F forecasted as the overnight low will activate the opening of a severe weather shelter. Precipitation of 2" forecasted or on the ground if freezing temperature (32°) threshold is reached is also an activation factor.
3. Temperature ranges collected at the Bellingham Airport from the National Oceanic and Atmospheric Administration (NOAA) will be the only source utilized for determining whether the weather threshold is met.
4. Wind Chill used as a factor for weather threshold is extremely variable due to gusts, nine micro-climates in the county, and challenges with forecasting sustained winds. Wind Chill will be considered and the negotiated contract(s) will define the parameters of when wind conditions may activate shelter opening.
5. Contracted organizations will have final say on whom they serve, within the guidelines of the contract. More vulnerable populations will be prioritized. Capacity constraints of contracted organizations may also limit the number of days a severe weather shelter can be offered.
6. Unique requests (i.e., pets, couples, meals) will be considered, but may not be accommodated due to insufficient contracted organization capacity.
7. Twenty-four hours advance notice, when possible, will be provided to the contracted organization(s) when requesting the opening of a severe weather shelter.
8. Severe Weather shelter(s) will be deactivated when thresholds for forecasted severe weather are no longer met
9. Nothing prohibits organizations from opening their own shelters during severe weather, but public resources will not be offered without a prearranged contract.

**LICENSE AND EMERGENCY AUTHORIZATION TO USE CITY FACILITIES  
WHATCOM COUNTY  
1100 RAILROAD AVENUE**

The CITY OF BELLINGHAM, a Washington municipal corporation (“City”) whose address for notices is 210 Lottie St., Bellingham, WA 98225, for and in consideration of Licensee’s compliance with the conditions set forth herein, hereby grants to Whatcom County, a Washington municipal corporation (“Licensee”) whose address for notices is 311 Grand Avenue Bellingham, WA 98225, a revocable, non-exclusive license (“License”) to enter and use City-owned real property only for the purposes set forth herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensed Premises. The licensed premises is located at 1100 Railroad Avenue, Bellingham, Whatcom County Parcel #380330145032 and is depicted on Exhibit A attached hereto (“Licensed Premises”).
2. License Term and Termination. This License is hereby issued pursuant BMC 20.15.100(A)(3) by the City to Licensee to operate an emergency severe weather shelter at 1100 Railroad Avenue and will become effective when: (1) it is fully executed by both parties; and (2) the City has completed all site preparation (the Effective Date). The City’s building official and fire marshal and the Whatcom County Health Department find that the proposed temporary location poses no threat to human life, health, or safety. No guests will be allowed until the Effective Date. The License shall expire on March 31, 2022 (the Expiration Date), unless terminated sooner. The City may terminate this License for cause (breach of any provision of this License) if Licensee fails to cure any default within ten (10) days of receipt of written notice of such default. The City may terminate this license for convenience on thirty (30) days written notice. Notwithstanding the foregoing, any violation of the conditions listed in section 9 hereof may result in immediate termination of this License. Licensee shall immediately inform its guests of all such terminations. By 5:00 p.m. on the effective date of termination, Licensee shall remove any and all materials located on the Licensed Premise related to the severe weather shelter unless placed on the Licensed Premise by the City. In the event Licensee fails to remove any such materials, the City reserves the right to remove them immediately. Costs associated with removal and any subsequent storage will be at the expense of Licensee Prior to removal, the City will provide twenty-four (24) hour written notice to Licensee. Email is sufficient for written notice.
3. Permitted Use. Once the site is fully operational, Licensee may use the Licensed Premises only for the operation and management of the severe weather shelter to serve a maximum number of individuals not greater than the number allowed pursuant to the occupancy limit (“Guests”), social and health services and overnight shelter or other uses as authorized by Whatcom County. Licensee agrees to keep the Licensed Premises in a neat and clean condition, and to be responsible for all damages caused to the Licensed Premises by Licensee, its agents, invitees, members, or contractors on the Licensed Premises. Licensee shall not use or permit the Licensed Premises to be used in violation of any municipal, county, state or federal law, ordinance, rule or regulation, or in

any manner that may create a nuisance. Firearms and/or other weapons are prohibited on the Licensed Premises. Registered sex offenders and people who are required to register as a sex offender will be prohibited from the Licensed Premises.

4. City's Right to Bar Guests. The City has the right to issue trespass notices to Licensee's Guests and thus bar them from entry to the Licensed Premises they fail to comply with any applicable criminal codes or laws.

5. Responsibilities of City. The City shall provide the following:

- 5.1 The facility located at 1100 Railroad Avenue;
- 5.2 Power, garbage, water, and sewer services;
- 5.3 Exterior site lighting that will be active during hours of darkness.

6. Responsibilities of Licensee. It is the sole responsibility of Licensee to operate the severe weather shelter, including, among other requirements in this License:

6.1 No fewer than one staff member, which shall be either Licensee's staff members or designated contractor staff or trained volunteers, must be physically present at Licensed Premises at all times during the hours of operations (7:00 p.m. to 9:00 a.m.) for the duration of the License. The staff member shall serve as site manager and supervise the operation of the shelter. The site manager is the primary point of contact for public safety and emergency services and shall address day-to-day operational issues as they arise. A complete listing of all staff members who will serve as a site manager shall be submitted to the City before occupancy. Licensee shall ensure that site managers are made aware of their duties, receive training defined by Whatcom County for a severe weather shelter and understand to call 9-1-1 in an emergency.

6.2 Licensee shall ensure that any damage to the Licensed Premises caused by Guests through either negligence, intentional abuse, accident beyond normal use is repaired.

6.3 Licensee, and Guests shall comply with all health and safety regulations promulgated by local, state, or federal authorities, specifically including all COVID-related gathering limits and mask mandates.

6.4 Licensee will provide custodial services, including bathroom maintenance.

6.5 Licensee shall insure that there are no open flames, unvented fuel-fired heaters (i.e. propane heaters), or cooking operations which produce grease-laden vapors.

7. No Disposal of Wastewater. Under no circumstances may wastewater be discharged directly to the ground or into a stormwater conveyance.

8. Prohibited Use/Condition. Except as otherwise expressly stated herein, Licensee may not install signs, dig, change grade, alter, or improve any part of the Licensed Premises in any manner whatsoever without the City's prior written consent, which may be withheld in the City's sole and absolute discretion. Licensee will not, store, release, or deposit (or permit the same) any hazardous, toxic or dangerous substances onto the Licensed Premises. THE CITY MAKES NO

REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF THE LICENSED PREMISES, INCLUDING WITH REGARD TO THE POSSIBLE PRESENCE OF CONTAMINANTS, POLLUTION, OR OTHER ENVIRONMENTAL HAZARDS. FOR PURPOSES OF THIS LICENSE, LICENSEE ACCEPTS THE CONDITION OF THE LICENSED PREMISES "AS IS" WITH ALL FAULTS AND DEFICIENCIES, AND ACCEPTS ALL RISKS, WHETHER KNOWN OR UNKNOWN. LICENSEE UNDERSTANDS THAT THE LICENSED PREMISES ARE LOCATED ON A WASHINGTON STATE DEPARTMENT OF ECOLOGY SITE LISTED FOR CONTAMINATION AND ACCEPT ALL RELATED RISKS ASSOCIATED WITH DIGGING OR ANY OTHER ACTIVITY WHICH MAY CAUSE A RELEASE.

9. Release. Licensee hereby releases and waives any and all claims related to the severe weather shelter against the City, including all claims relating to environmental contamination. In the event Licensee engages contractors to do work on the Licensed Premises, it hereby agrees to require those contractors to be licensed and bonded and comply with all other applicable state, local and federal laws, and regulations and to release this City and waive any all claims related to environmental contamination.

10. Indemnification. Licensee shall indemnify, hold harmless and defend the City, its officers, agents and employees, from and against any and all loss, claims, expense and liability whatsoever arising out of, or in connection with this License or Licensee's exercise of rights hereunder, except for those losses and claims arising solely from the City's negligence. This indemnity includes, but is not limited to, all expenses incurred by or for the City, or its officers, agents or employees, including but not limited to judgments, settlements, costs, investigation, expenses and attorney fees, including any and all costs associated with the release of environmental contamination on the Licenses Premises. The parties hereto agree that the City shall not be responsible to the Licensee for any property loss or damage done to the Licensee's property, whether real, personal or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever. It shall be the Licensee's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the City, Licensee, third party, or act of nature.

11. Insurance. Licensee agrees to maintain in force during the term of this License, including the right of entry period referenced in Section 6, above, and as to which the City shall be named as additional insured (with any endorsement required by the policy):

Workers Compensation:	Statutory Amount
Broad Form Comprehensive	\$1,000,000 per occurrence
General Liability:	\$2,000,000 aggregate
Automobile Liability:	\$1,000,000

Said insurance shall be primary and noncontributory with any other insurance for which the City is a named insured. All insurance coverages required under this Agreement shall include a waiver of subrogation against the City for losses arising from work performed by the Licensee.

An insurance certificate showing the coverage required under this section will be submitted to the City for approval at least annually.

Licensee may satisfy its insurance obligations herein through Licensee's participation in a joint self-insurance program, through the Washington Counties Risk Pool (WCRP).

Licensee certifies that it is a member of the Washington Counties Risk Pool, as provided by RCW 48.62.031, and that it is covered by the Pool's Joint Self-Insurance Liability Memorandum of Coverage Document (MLC).

12. Default. Should either party hereto believe that the other has failed to perform an obligation under this License, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party fifteen (15) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non-defaulting party, this License may be terminated upon seven (7) days written notice (delivered by certified mail).

13. Class of Persons. The issuance of this License and the provisions herein do not create or designate any particular class of persons who will or should be specifically protected by it.

14. Project Managers. The following individuals are hereby designated as Project Managers and shall be contacted during regular business hours regarding any issues arising under this License:

For the City: Public Works: Tom Bredeson, Facilities Manager; City of Bellingham; 360-7787833; [tbredeson@cob.org](mailto:tbredeson@cob.org).

For the County: Ann Beck, Whatcom County Health Department, Human Services Supervisor, 509 Girard Street, Bellingham, WA 98225, Direct: (360) 778-6055 | Cell: (360) 543-3043; [ABeck@co.whatcom.wa.us](mailto:ABeck@co.whatcom.wa.us).

15. After Hours Contact. After 5:00 p.m. and prior to 8:00 a.m. and on weekends and holidays, issues related to the License should be directed to Post Point emergency number 360-778-7700.

16. No Assignment. Licensee is prohibited from either assigning or subletting all or any portion of the Licensed Premises.

17. Enforcement and Venue. Licensee shall reimburse the City upon demand for all costs and expenses, including without limitation, reasonable attorney fees incurred by the City in enforcing its rights under this License or in otherwise protecting its interests in connection with the Licensed Premises, whether or not a lawsuit is instituted. This document shall be construed according to the laws of the state of Washington and venue in any lawsuit shall be Whatcom County, Washington.

18. Notices. All notices required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified mail to the Project Manager at the addresses set forth above or to such other address as Licensee shall notify the City of in writing.

19. No Waiver. No waiver of any provision of this License will be valid unless in writing and signed by the person against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

20. Complete Agreement. This License sets forth the complete agreement of the parties with respect to the Licensed Premises, and it shall not be amended or modified except by a further written agreement signed by the parties. This License shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

21. Signing Authority. The person(s) signing this License warrant that they have the authority to sign this License and bind their respective parties to the terms hereof.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

WHATCOM COUNTY:

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

**Approved as to Form:**

\_\_\_\_\_  
Royce Buckingham, Senior Civil Deputy Prosecutor

Addendum A

CITY OF BELLINGHAM, a first class  
municipal corporation

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Seth Fleetwood, Mayor

Attest:

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Andy Asbjornsen  
Finance Director

Approved as to form:

---

Office of City Attorney

Department Approval:

---

Public Works Director





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-076

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<b>File ID:</b>	AB2022-076	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/24/2022	<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>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Resolution amending the 2022 CEDS project list to include an additional Port of Bellingham project and revise the name of a Whatcom County project already listed

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution amending the 2022 CEDS project list to include an additional Port of Bellingham project and revise the name of a Whatcom County project already listed

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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, Resolution, Attachment A

**To:** Whatcom County Council

**CC:** County Executive Satpal Sidhu, Deputy Executive Tyler Schroeder, Port of Bellingham Executive Director Rob Fix

**From:** Port of Bellingham, Economic Development Division

**Date:** January 13, 2022

**Re:** CEDS Project List 2022 – Project List Addendum

In 2020-2021, two large employers in Whatcom County closed their doors: Safran and Alcoa/Intalco. These firms were responsible for over 1000 jobs in Whatcom County and thus replacing them or finding new users for the properties is a high priority.

Many partners within Whatcom County are currently working to reopen the Alcoa/Intalco facility. To assist these efforts, the Port of Bellingham requests the following CEDS Project be added to the Project List (found in the [CEDS Report 2022-2026, Appendix #6](#), approved by Resolution 2021-046) as a Port project. The CEDS Report 2021-2025 and the Project List for 2021 were approved on [October 26, 2021](#), with an amendment passed on [December 7, 2021](#) authorizing the change of date for the report to 2022-2026.

The project is not eligible for EDI funds, however, they will be applying for several federal and state level funding sources, many of which require the Project be on the current Project List and to be linked to a regional economic strategy. This project fulfills multiple CEDS goals, including strengthening our economic base (Goal #1), helping our workforce skills and employer needs align (Goal #3), and improving the physical infrastructure of the County with an emphasis on the Cherry Point area (Goal #2).

Due to the time sensitive nature of grant applications, as well as special one-time funding opportunities arising due to the American Rescue Plan Act (ARPA) funds, it behooves the County to add this project to the list at the earliest possible date.

The project details are as follows.

**Project Name/Title:** Project Reopen Alcoa/Intalco

**Project Location:** Alcoa/Intalco facility, Cherry Point area, Whatcom County

**Project Description:** To retain jobs, train workforce in support of plant reopening with upgraded technology to reduce greenhouse gas emissions. Improve physical infrastructure related to plant and plant access.

**Project Type:** Economic Development, Workforce, Energy, and Public Works

**Estimated Cost:** \$10,000,000

**Potential Funding Sources:** EDA, CERB, WA Commerce, State Legislative Grant, EPA Brownfields grants, local, and private/developer

**EDI?:** No

**Other?:** Yes

PROPOSED BY: Executive

INTRODUCTION DATE: February 8, 2022

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

**A RESOLUTION OF THE WHATCOM COUNTY COUNCIL UPDATING THE  
APPENDIX OF THE 2022 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 2021, the Port of Bellingham, through an interlocal agreement with the county, completed the work to update the document which Council approved through Resolution 2021-046; and

**WHEREAS**, the project list did not include the correct name and amount for a Whatcom County project known as the State Street Way Station project; and

**WHEREAS**, the Port of Bellingham has a new project known as the Alcoa/Intalco Reopen project which is requested to be added to the CEDS project list; and

**WHEREAS**, both projects are listed and highlighted in Attachment "A", titled Updated CEDS 2022 Project List; and

**WHEREAS**, RCW 82.14.370 requires that projects utilizing rural sales tax revenue must be contained 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 2022 update to the 2022 Whatcom County Economic Development Strategy Appendix.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED as to form:

Christopher Quinn per email 01/24/2022  
Civil Deputy Prosecutor



**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

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

**Whatcom County CEDS Project List**  
**Attachment "A", Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 traffic signal into a multimodal roundabout.	Public Works	12,000,000	EDI, Port, WSDOT, Greenways and other federal, state and local funding sources	Yes	Yes
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</b>							

**Whatcom County CEDS Project List**  
**Attachment "A", Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
<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 Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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



**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 unserviced and undeveloped industrial area within the City.	Public Works	3,000,000	EDI, Stormwater Funding	Yes	Yes
<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 prinicpal 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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
<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
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



**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
<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
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



**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
<b>Port of Bellingham Projects</b>							
<b>Project Reopen Alcoa/Intalco</b>	Whatcom County	To retain jobs, train workforce in support of plant reopening with upgraded technology to reduce greenhouse gas emissions. Improve physical infrastructure related to plant and plant access.	Economic Development, Workforce, Energy, and Public Works	10,000,000	EDA, CERB, WA Commerce, State Legislative Grant, EPA Brownfields grants, local, and private/developer	No	Yes
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
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

**Whatcom County CEDS Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

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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
<b>PUD #1</b>							
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



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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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 fiberoptics 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>							
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

**Whatcom County CEDS Project List**  
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Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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	WayStation Project	Public Works	9,467,000	Federal, state, local grants, EDI	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

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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
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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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
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

**Whatcom County CEDS Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
Lighthouse Marine Park Launch	Point Roberts	Repair boat launch (2018 storm damage)	Public Works, Parks & Rec, Tourism	50,000	REET II	No	No
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 Project List**  
**Attachment “A”, Updated CEDS 2022 Project List**

Project Name	Project Location	Project Description	Project Type	Estimated Cost	Potential Funding Source(s)	EDI?	Other?
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



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-078

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<b>File ID:</b>	AB2022-078	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/25/2022	<b>Entered by:</b>	DLaplant@co.whatcom.wa.us		
<b>Department:</b>	Human Resources Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

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

Request authorization for a Letter of Understanding between Whatcom County and The International Organization of Masters, Mates and Pilots (MMP) and the Inlandboatmen's Union of the Pacific (IBU) to amend the current Collective Bargaining Agreement for the period of January 1, 2020 - December 31, 2022

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

Please refer to staff memo for background and more information.

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### **HISTORY OF LEGISLATIVE FILE**

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

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**Attachments:** Staff Memo, contract



**MEMO TO:** County Council Members

**CC:** Satpal Sidhu, County Executive  
Tyler Schroeder, Deputy Executive

**FROM:** Donnie LaPlante, HR Associate Manager

**DATE:** January 24, 2022

**SUBJECT:** MMP/IBU - Letter of Understanding for Wage Adjustment

---

The International Organization of Masters, Mates and Pilots (MMP) and the Inlandboatmen's Union of the Pacific (IBU) jointly represent employees who operate the Whatcom Chief ferry. Employees covered by the MMP-IBU collective bargaining agreement bargained a three-year agreement in 2020 that runs through 2022. That agreement included a wage increase of 1.25% in 2022 with an opportunity to request to bargain further if, during the life of the CBA, the unions believe another bargaining unit received better wage improvements. Several bargaining units, including the Teamsters Master agreement, received 3% increases for 2022 and thus MMP and IBU requested to bargain.

The County did a lookback at wage adjustments over the last six years, comparing MMP & IBU with the Teamsters Master and Unrepresented employees. After meeting and bargaining, we reached a tentative agreement of an additional 1%, for a new total increase of 2.25% for 2022. This adjustment will help with retention and recruitment, maintain pace with our comparable Counties, and maintain internal equity among other County groups.

Should you have any questions, I am available by email at [dlaplant@co.whatcom.wa.us](mailto:dlaplant@co.whatcom.wa.us) or at extension 5306.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. \_\_\_\_\_

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

Contract Routing:	1. Prepared by: _____ 2. Attorney signoff: _____ 3. AS Finance reviewed: _____ 4. IT reviewed (if IT related): _____ 5. Contractor signed: _____ 6. Submitted to Exec.: _____ 7. Council approved (if necessary): _____ 8. Executive signed: _____ 9. Original to Council: _____	Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
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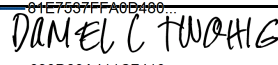
**LETTER OF AGREEMENT  
BY AND BETWEEN  
WHATCOM COUNTY, WASHINGTON  
AND  
MASTERS, MATES & PILOTS  
AND  
INLANDBOATMANS UNION**

This Letter of Agreement is by and between Whatcom County (the County) and Masters, Mates & Pilots, and Inlandboatman's Union (the Unions) regarding the 2020-2022 Collective Bargaining Agreement (CBA).

The parties have met, conferred and bargained in accordance with Rule 26.01 (paragraph 2) which states:

***"For the term of this agreement, should the UNIONS have reasonable and demonstrable belief other employees in the county, represented or unrepresented, excluding binding interest arbitration groups, should achieve a settlement affording employees better wage improvements or medical benefits, the county shall afford the UNIONS an opportunity to bargain regarding the difference between the settlements upon 30 days request to bargain by the UNIONS."***

1. The County and Unions acknowledge this CBA included a 2022 wage increase of 1.25%.
2. Effective and retroactive to the first full pay period in January 2022, each step in all ranges of the 2021 hourly matrix shall increase by an additional 1% for a total of 2.25%.
3. Any disputes regarding this LOA are subject to the CBA grievance procedure.
4. This LOA may be amended at any time with mutual agreement of the County and the Unions. The foregoing being the agreement of the Parties is in addition to such other provision in the CBA. This Letter of Understanding shall be effective as of the date of Council approval and shall supersede any conflicting provision in the CBA.

Name	Signature	Date
Melissa Keeley, Human Resources	<small>DocuSigned by:</small>  <small>DocuSigned by: 33CB3D0E2C93409...</small>	1/18/2022
Peter Hart, IBU Regional Director	<small>DocuSigned by:</small>  <small>DocuSigned by: 01E7537FFA0B400...</small>	1/20/2022
Dan Twohig, MMP	<small>DocuSigned by:</small>  <small>030D89A411C7410...</small>	1/21/2022
Satpal Sidhu, County Executive		

Approved by to Form:

  
039310698382413...  
George Roche, Senior Civil Deputy Prosecuting Attorney

1/18/2022

Date

Date approved by Council:





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-091

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<b>File ID:</b>	AB2022-091	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<b>Entered by:</b>	ldevries@co.whatcom.wa.us		
<b>Department:</b>	Prosecuting Attorney's Office	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Health Care Authority to provide funding to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the grant period 10/01/21 - 06/30/23 in the amount of \$1,175,834.00

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

n/a

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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 Information Sheet, Proposed contract

## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Eric Richey, Whatcom County Prosecutor

**RE:** Washington State Health Care Authority – Law Enforcement Assisted Diversion (LEAD) Program Contract K5735

**DATE:** January 28, 2022

---

- **Background and Purpose**

The Prosecuting Attorney's Office has been awarded a 2-year grant through the Washington State Health Care Authority to provide funding for the Law Enforcement Assisted Diversion (LEAD) program in Whatcom County. The LEAD program is a community-based diversion program with the goal of improving public safety and public order, and reducing unnecessary criminal legal system involvement of people who participate in the program. Sea Mar will provide intensive case management services to LEAD members.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$1,175,834 during the contract period (10/01/2021 – 6/30/2023). The funding for this contract is provided by the Washington State Health Care Authority.

Please contact Vanessa Martin at [vmartin@co.whatcom.wa.us](mailto:vmartin@co.whatcom.wa.us) if you have any questions regarding this contract.

Thank you kindly.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Prosecuting Attorney's Office
Division/Program: <i>(i.e. Dept. Division and Program)</i>	6510 Prosecuting Attorney Admin
Contract or Grant Administrator:	Vanessa Martin
Contractor's / Agency Name:	Washington State Health Care Authority
Is this a New Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): <u>K5735</u> CFDA#: <u>93.959</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract _____ Cost Center: <u>2623</u>	
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>1,175,834.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____ Summary of Scope:	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This contract provides funds to continue LEAD program operations within Whatcom County.	
Term of Contract: 10/01/2021	Expiration Date: 6/30/2023

Contract Routing:	1. Prepared by: <u>Vanessa Martin</u>	Date: <u>1/20/2022</u>
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

	<b>PROFESSIONAL SERVICES CONTRACT for LEAD Expansion Services</b>	HCA Contract Number: K5735
---	---	----------------------------

**THIS CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and Whatcom County Prosecuting Attorney's Office, (Contractor).

<b>CONTRACTOR NAME</b> Whatcom County Prosecuting Attorney's Office		<b>CONTRACTOR DOING BUSINESS AS (DBA)</b>		
<b>CONTRACTOR ADDRESS   Street</b> 311 Grand Ave.		<b>City</b> Bellingham	<b>State</b> WA	<b>Zip Code</b> 98225
<b>CONTRACTOR CONTACT</b> Vanessa Martin	<b>CONTRACTOR TELEPHONE</b> 360-778-5716	<b>CONTRACTOR E-MAIL ADDRESS</b> <a href="mailto:vmartin@co.whatcom.wa.us">vmartin@co.whatcom.wa.us</a>		
Is Contractor a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>CFDA NUMBER(S):</b> 93.959	<b>FFATA Form Required</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

<b>HCA PROGRAM</b>	<b>HCA DIVISION/SECTION</b> Division of Behavioral Health and Recovery (DBHR)
<b>HCA CONTACT NAME AND TITLE</b>  Michele Gayle, Contract Manager	<b>HCA CONTACT ADDRESS</b> Health Care Authority 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
<b>HCA CONTACT TELEPHONE</b> (360) 725-9817	<b>HCA CONTACT E-MAIL ADDRESS</b> <a href="mailto:michele.gayle@hca.wa.gov">michele.gayle@hca.wa.gov</a>

<b>CONTRACT START DATE</b> October 1, 2021	<b>CONTRACT END DATE</b> June 30, 2023	<b>TOTAL MAXIMUM CONTRACT AMOUNT</b> \$1,175,834
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<b>PURPOSE OF CONTRACT:</b> Provide intensive case management services to recently arrested and/or high risk for arrest individuals through the expansion of the WA State LEAD program throughout Whatcom County.
--

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

<b>CONTRACTOR SIGNATURE</b>	<b>PRINTED NAME AND TITLE</b>	<b>DATE SIGNED</b>
<b>HCA SIGNATURE</b>	<b>PRINTED NAME AND TITLE</b>	<b>DATE SIGNED</b>

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### **Attachments**

- Attachment 1: Confidential Information Security Requirements
- Attachment 2: Federal Compliance, Certifications and Assurances
- Attachment 3: Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form
- Attachment 4: Substance Abuse and Mental Health Services Agency (SAMHSA) Award Terms
- Attachment 5: Federal Award Identification for Subrecipients

### **Schedules**

- Schedule A: Statement of Work (SOW) LEAD Expansion Services

## Contract #K5735 for LEAD Expansion Services

### Recitals

The state of Washington, acting by and through the Health Care Authority (HCA), seeks client services for LEAD Expansion Services; and

WHEREAS, client services are exempt from competitive solicitation (RCW 39.26.125(6)) and Whatcom County Prosecuting Attorney's Office (Contractor) seeks to provide such services.

HCA has determined that entering into a Contract with Whatcom County Prosecuting Attorney's Office will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to Whatcom County Prosecuting Attorney's Office this Contract, the terms and conditions of which will govern Contractor's providing to HCA the LEAD Expansion Services.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

#### 1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

#### 2. DEFINITIONS

**"Authorized Representative"** means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

**"Breach"** means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

**"Business Associate"** means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

**"Business Days and Hours"** means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**“Centers for Medicare and Medicaid Services”** or **“CMS”** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

**“CFR”** means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

**“Confidential Information”** means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

**“Contract”** means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

**“Contractor”** means **Whatcom County Prosecuting Attorney’s Office**, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

**“Covered entity”** means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

**“Data”** means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

**“Effective Date”** means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“HCA Contract Manager”** means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

**“Health Care Authority”** or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

**“Overpayment”** means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

**“Proprietary Information”** means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“Protected Health Information”** or **“PHI”** means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

**“RCW”** means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

**“Statement of Work”** or **“SOW”** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

**“Subcontractor”** means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

**“Subrecipient”** means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency. As in 45 C.F.R. 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 C.F.R. 200.93, or any successor or replacement to such definition, for any other federal award. See OMB circular a-133 for additional details.

**“USC”** means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

**“WAC”** means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

### 3. SPECIAL TERMS AND CONDITIONS

#### 3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications;
- 3.1.7 Regular, punctual attendance at all meetings; and
- 3.1.8 Provision of high quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

#### 3.2 TERM

- 3.2.1 The initial term of the Contract will commence on **October 1, 2021** and continue through **June 30, 2023**, unless terminated sooner as provided herein.
- 3.2.2 This Contract may be extended in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.2.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

#### 3.3 COMPENSATION

- 3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is **\$1,175,834**, and includes any allowable expenses.



- 3.3.2 Contractor's compensation for services rendered will be based on the following rates or in accordance with the following terms.
- 3.3.3 Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor. If Contractor is required by HCA to travel, any such travel must be authorized in writing by the **HCA Contract Manager** and reimbursement will be at rates not to exceed the then-current rules, regulations, and guidelines for State employees published by the Washington State Office of Financial Management in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/10.htm>); reimbursement will not exceed expenses actually incurred.

To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses and receipts for any expenses of \$50 or more.

- 3.3.4 Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: 93.959, Substance Abuse Block Grant, B08T10839777. Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: *Federal Compliance, Certification and Assurances*, attached.

### 3.4 INVOICE AND PAYMENT

- 3.4.1 Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: [HCAAdminAccountsPayable@hca.wa.gov](mailto:HCAAdminAccountsPayable@hca.wa.gov) with a cc to HCA Contract Manager. Include the HCA Contract number in the subject line of the email.
- 3.4.2 Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.
- 3.4.3 Contractor must submit properly itemized invoices to include the following information, as applicable:

- 3.4.3.1 HCA Contract number **K5735**;
- 3.4.3.2 Contractor name, address, phone number;
- 3.4.3.3 Description of Services;
- 3.4.3.4 Deliverable number;
- 3.4.3.5 Date(s) of delivery;

- 3.4.3.6 Net invoice price for each item;
- 3.4.3.7 Applicable taxes;
- 3.4.3.8 Total invoice price; and
- 3.4.3.9 Payment terms and any available prompt payment discount.
- 3.4.4 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.
- 3.4.5 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.
- 3.4.6 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

### **3.5 CONTRACTOR AND HCA CONTRACT MANAGERS**

- 3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.

- 3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

<b>CONTRACTOR</b>		<b>Health Care Authority</b>	
<b>Contract Manager Information</b>		<b>Contract Manager Information</b>	
Name:	Vanessa Martin	Name:	Michele Gayle
Title:		Title:	Contract Manager
Address:	311 Grand Ave. Bellingham, WA 98225	Address:	626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
Phone:	360-778-5716	Phone:	360-725-9817
Email:	<a href="mailto:vmartin@co.whatcom.wa.us">vmartin@co.whatcom.wa.us</a>	Email:	<a href="mailto:michele.gayle@hca.wa.gov">michele.gayle@hca.wa.gov</a>

### 3.6 KEY STAFF

- 3.6.1 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff must not be changed during the term of the Statement of Work (SOW) from the people who were described in the Response for the first SOW or those Key Staff initially assigned to subsequent SOWs, without the prior written approval of HCA until completion of their assigned tasks.
- 3.6.2 During the term of the Statement of Work (SOW), HCA reserves the right to approve or disapprove Contractor's Key Staff assigned to this Contract, to approve or disapprove any proposed changes in Contractor's Key Staff, or to require the removal or reassignment of any Contractor staff found unacceptable by HCA, subject to HCA's compliance with applicable laws and regulations. Contractor must provide a resume to HCA of any replacement Key Staff and all staff proposed by Contractor as replacements for other staff must have comparable or greater skills for performing the activities as performed by the staff being replaced.

### 3.7 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

- 3.7.1 In the case of notice to the Contractor, send notification to the contact listed on Page 1 of this Contract

3.7.2 In the case of notice to HCA:

**Attention:** Contracts Administrator  
Health Care Authority  
Division of Legal Services  
Post Office Box 42702  
Olympia, WA 98504-2702  
CONTRACTS@hca.wa.gov

3.7.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.7.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

### 3.8 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

3.8.1 Applicable Federal and State of Washington statutes and regulations;

3.8.2 Recitals

3.8.3 Special Terms and Conditions;

3.8.4 General Terms and Conditions;

3.8.5 Attachment 1: Confidential Information Security Requirements;

3.8.6 Attachment 2: Federal Compliance, Certifications and Assurances;

3.8.7 Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form;

3.8.8 Schedule A(s): Statement(s) of Work;

3.8.9 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

### 3.9 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this

Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- 3.9.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 3.9.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- 3.9.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.9.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

- 3.9.5 The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

- 3.9.6 Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:



- 3.9.6.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
- 3.9.6.2 Notification and call center services for individuals affected by a Breach.
- 3.9.6.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
- 3.9.6.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

The policy must be maintained for the term of this Agreement and three (3) years following its termination.

## **4. GENERAL TERMS AND CONDITIONS**

### **4.1 ACCESS TO DATA**

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

### **4.2 ADVANCE PAYMENT PROHIBITED**

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

### **4.3 AMENDMENTS**

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

### **4.4 ASSIGNMENT**

- 4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.37, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties

made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

4.4.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

#### **4.5 ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

#### **4.6 CHANGE IN STATUS**

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

#### **4.7 CONFIDENTIAL INFORMATION PROTECTION**

4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).

4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

- 4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

#### **4.8 CONFIDENTIAL INFORMATION SECURITY**

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

#### **4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION**

- 4.9.1 Contractor must notify the HCA Privacy Officer ([PrivacyOfficer@hca.wa.gov](mailto:PrivacyOfficer@hca.wa.gov)) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.
- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
- 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
  - 4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
  - 4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

- 4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.
- 4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

#### **4.10 CONTRACTOR'S PROPRIETARY INFORMATION**

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

#### **4.11 COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### **4.12 DEBARMENT**

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

#### **4.13 DISPUTES**

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without

delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

4.13.2.3 State the relative positions of the parties and the remedy sought;

4.13.2.4 State the Contract Number and the names and contact information for the parties;

4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

#### **4.14 ENTIRE AGREEMENT**

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.44 *Warranties*.

#### **4.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)**

4.15.1 This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.



4.15.2 To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at [www.dnb.com](http://www.dnb.com).

4.15.3 Information about Contractor and this Contract will be made available on [www.uscontractorregistration.com](http://www.uscontractorregistration.com) by HCA as required by P.L. 109-282. HCA's Attachment 3: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

#### **4.16 FORCE MAJEURE**

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

#### **4.17 FUNDING WITHDRAWN, REDUCED OR LIMITED**

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.17.1 Terminate this Contract pursuant to Section 4.41.3, *Termination for Non-Allocation of Funds*;

4.17.2 Renegotiate the Contract under the revised funding conditions; or

4.17.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

4.17.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

4.17.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the

date of resumption. For purposes of this subsection, "written notice" may include email.

- 4.17.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

#### **4.18 GOVERNING LAW**

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11<sup>th</sup> Amendment to the United States Constitution.

#### **4.19 HCA NETWORK SECURITY**

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

#### **4.20 INDEMNIFICATION**

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.8 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

#### **4.21 INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor

make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

#### **4.22 INDUSTRIAL INSURANCE COVERAGE**

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

#### **4.23 LEGAL AND REGULATORY COMPLIANCE**

4.23.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

4.23.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.23.3 Failure to comply with any provisions of this section may result in Contract termination.

#### **4.24 LIMITATION OF AUTHORITY**

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

#### **4.25 NO THIRD-PARTY BENEFICIARIES**

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

#### **4.26 NONDISCRIMINATION**

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be

rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

#### **4.27 OVERPAYMENTS TO CONTRACTOR**

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 *Disputes*.

#### **4.28 PAY EQUITY**

- 4.28.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.28.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.28.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.28.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 4.28.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

#### **4.29 PUBLICITY**

- 4.29.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by

Contractor in any advertising or other publicity materials.

- 4.29.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

#### **4.30 RECORDS AND DOCUMENTS REVIEW**

- 4.30.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].
- 4.30.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- 4.30.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### **4.31 REMEDIES NON-EXCLUSIVE**

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

#### **4.32 RIGHT OF INSPECTION**

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



#### 4.33 RIGHTS IN DATA/OWNERSHIP

- 4.33.1 HCA and Contractor agree that all data and work products (collectively “Work Product”) produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 4.33.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.33.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.33.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.33.5 Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.33.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or

infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

#### **4.34 RIGHTS OF STATE AND FEDERAL GOVERNMENTS**

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

#### **4.35 SEVERABILITY**

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

#### **4.36 SITE SECURITY**

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

#### **4.37 SUBCONTRACTING**

- 4.37.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.
- 4.37.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

- 4.37.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.
- 4.37.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.
- 4.37.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

#### **4.38 SUBRECIPIENT**

##### **4.38.1 General**

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

- 4.38.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
- 4.38.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
- 4.38.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 4.38.1.4 Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 4.38.1.5 Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;
- 4.38.1.6 Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and
- 4.38.1.7 Comply with the Omnibus Crime Control and Safe streets Act of 1968,

Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

#### 4.38.2 Single Audit Act Compliance

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

- 4.38.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
- 4.38.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

#### 4.38.3 Overpayments

- 4.38.3.1 If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor will refund the full amount to HCA as provided in Section 4.27 *Overpayments to Contractors*.

### 4.39 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

### 4.40 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal

property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

#### **4.41 TERMINATION**

##### **4.41.1 TERMINATION FOR DEFAULT**

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

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

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

##### **4.41.2 TERMINATION FOR CONVENIENCE**

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

##### **4.41.3 TERMINATION FOR NONALLOCATION OF FUNDS**

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to



notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

#### 4.41.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

#### 4.41.5 TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

### 4.42 TERMINATION PROCEDURES

4.42.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

4.42.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

4.42.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

- 4.42.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.42.3.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- 4.42.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 4.42.3.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
- 4.42.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.42.3.6 Complete performance of any part of the work that was not terminated by HCA; and
- 4.42.3.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

#### **4.43 WAIVER**

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

#### **4.44 WARRANTIES**

- 4.44.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.44.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

4.44.3 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

## **ATTACHMENT 1**

### **Confidential Information Security Requirements**

#### **1. Definitions**

In addition to the definitions set out in Section 2 of this Contract **K5735** for **LEAD Expansion Services**, the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
  - i. Passwords for external authentication must be a minimum of 10 characters long.
  - ii. Passwords for internal authentication must be a minimum of 8 characters long.
  - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

## **2. Confidential Information Transmitting**

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

## **3. Protection of Confidential Information**

The Contractor agrees to store Confidential Information as described:

- a. Data at Rest:
  - i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
  - ii. Data stored on Portable/Removable Media or Devices:
    - Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
    - HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
      - 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
      - 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
      - 3. Keeping devices in locked storage when not in use;



4. Using check-in/check-out procedures when devices are shared;
  5. Maintain an inventory of devices; and
  6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

#### **4. Confidential Information Segregation**

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
  - i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
  - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
  - iii. in a database that will contain only HCA Data; or
  - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
  - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

#### **5. Confidential Information Shared with Subcontractors**

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

## **6. Confidential Information Disposition**

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

## ATTACHMENT 2

### Federal Compliance, Certifications and Assurances

- I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: **Michele Gayle**.
- a. **Source of Funds SABG-AR:** This Contract is being funded partially or in full through Cooperative Contract number **B08T10839777**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.959** in the amount of **\$1,175,834**. The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5735**.
  - b. **Period of Availability of Funds SABG-AR:** Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in **B08T10839777** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.
  - c. **Single Audit Act:** This section applies to subrecipients only. Subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A Subrecipient who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.
  - d. **Modifications:** This Contract may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
    - 1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
      - i. Deviations from the budget and Project plan.
      - ii. Change in scope or objective of the Contract.
      - iii. Change in a key person specified in the Contract.
      - iv. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
      - v. Need for additional funding.
      - vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
      - vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
    - 2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.
  - e. **Sub-Contracting:** The Contractor or Subrecipient shall not enter into a sub-contract for any of the work performed under this Contract without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the Contract pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

- f. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the Contractor or Subrecipient under this Contract may not be used by the Contractor or Subrecipient as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.
- g. *Unallowable Costs:* The Contractor or Subrecipient's expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this Contract.
- h. *Supplanting Compliance: SABG:* If SABG funds support this Contract, the Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).
- i. *Citizenship/Alien Verification/Determination:* The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.
- j. *Federal Compliance:* The Contractor or Subrecipient shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.
- k. *Civil Rights and Non-Discrimination Obligations:* During the performance of this Contract, the Contractor or Subrecipient shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101- 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>.

#### **HCA Federal Compliance Contact Information**

Washington State Health Care Authority  
Post Office Box 42710  
Olympia, Washington 98504-2710

- II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee, **Whatcom County Prosecuting Attorney's Office**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

	OMB CIRCULAR		
ENTITY TYPE	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS

State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501
Non-Profit Organizations and Non-Profit Hospitals	
Colleges or Universities and Affiliated Hospitals	
For-Profit Organizations	

III. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by the Washington State Health Care Authority.

- a. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION** : The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Contractor or Subrecipient not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause above certification in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

- b. **CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:** The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:
1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; Establishing an ongoing drug-free awareness program to inform employees about
    - i. The dangers of drug abuse in the workplace;
    - ii. The contractor's policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;



2. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (I) above;
3. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
4. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
5. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—
  - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
6. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

**Legal Services Manager**

WA State Health Care Authority  
 PO Box 42700  
 Olympia, WA 98504-2700

- c. **CERTIFICATION REGARDING LOBBYING:** Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative Contracts from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative Contract. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative Contract must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative Contracts EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.

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

- d. **CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA):** The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.
- e. **CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

**The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.**

f. **CERTIFICATION REGARDING OTHER RESPONSIBILITY MATTERS**

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an

explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
3. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HCA may terminate this transaction for cause or default.

### CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL:	TITLE:
PLEASE ALSO PRINT OR TYPE NAME:	
ORGANIZATION NAME: (if applicable)	DATE:

# **ATTACHMENT 3** **Federal Funding Accountability and Transparency Act (FFATA)** **Data Collection Form**

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at [www.dnb.com](http://www.dnb.com). Required Information about your organization and this contract will be made available on USASpending.gov by HCA as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at <https://www.uscontractorregistration.com/>.

## **CONTRACTOR**

1. Legal Name: Whatcom County Prosecuting Attorney's Office	2. DUNS Number: 60044641												
3. Principle Place of Performance: 311 Grand Ave. #201	3a. Congressional District												
3b. City: Bellingham	3c. State: WA												
3d. Zip+4: 9822	3e. Country												
4. Are you registered in CCR ( <a href="https://www.uscontractorregistration.com/">https://www.uscontractorregistration.com/</a> )? <input type="checkbox"/> YES (skip to page 2. Sign, date and return) <input type="checkbox"/> NO													
<p>In the preceding fiscal year did your organization:</p> <p>a. Receive 80% or more of annual gross revenue from procurement federal contracts, Subcontracts, grants, loans, sub-grants, and/or cooperative agreements; <b>and</b></p> <p>b. \$25,000,000 or more in annual gross revenues from federal procurement contracts, Subcontracts, grants, loans, subgrants, and/or cooperative agreements; <b>and</b></p> <p>c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330</p> <p><input type="checkbox"/> NO (skip the remainder of this section - Sign, date and return)</p> <p><input type="checkbox"/> YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).</p> <table border="1"> <thead> <tr> <th>Name Of Official</th> <th>Total Compensation</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> </tr> <tr> <td>2.</td> <td></td> </tr> <tr> <td>3.</td> <td></td> </tr> <tr> <td>4.</td> <td></td> </tr> <tr> <td>5.</td> <td></td> </tr> </tbody> </table> <p><b>Note:</b> "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c) (2))</p>		Name Of Official	Total Compensation	1.		2.		3.		4.		5.	
Name Of Official	Total Compensation												
1.													
2.													
3.													
4.													
5.													

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative	Date
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***HCA will not endorse the Contractor's sub-award until this form is completed and returned.***

**FOR HEALTH CARE AUTHORITY USE ONLY**

HCA Contract Number: <b>K5735</b>
FAIN: B08T10839777
Sub-award Project Description (see instructions and examples below)  Provide intensive case management services to recently arrested and/or high risk for arrest individuals through the expansion of the WA State LEAD program throughout Whatcom County.

**Instructions for Sub-award Project Description:**

In the first line of the description provide a title for the sub-award that captures the main purpose of the Subrecipients work. Then, indicate the name of the Subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

**Example of a Sub-award Project Description:**

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.



## ATTACHMENT 4

### Substance Abuse and Mental Health Services Agency (SAMHSA) Award Terms

By drawing or otherwise obtaining funds as a subawardee or contractor of a non-federal entity drawing or otherwise obtaining funds from SAMHSA, a branch of the United States Department of Health and Human Services (HHS), you agree to the following pass-through terms and conditions.

Name	Language
Acceptance of the Terms of an Award	This Subaward is subject to the SAMHSA Fiscal Year 2021 – Award Standard Terms, included directly, or incorporated by reference on the Notice of Award (NoA) support the grant.
Non-Supplanting	<p>Federal award funds must supplement, not supplant, nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds.</p> <p>Block grant funds (SABG and MHBG) will not be used to supplant state funding of alcohol and other drug prevention programs. See 45 CFR § 98.123</p>
Unallowable Costs	All costs incurred prior to the award issue date and costs not consistent with the funding opportunity, 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this subaward.
Marijuana Restrictions	Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana treatment using marijuana. Treatment in this context includes the treatment or opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. See, e.g., 45 CFR 75.300(a); 21 USC 812(c)(10) and 841. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substances under the federal law.
Executive Pay	The Consolidated Appropriations Act, 2021 (Public Law 116-260), signed into law on December 27, 2020 restricts the amount of direct salary to Executive Level II of the Federal Executive Pay scale. Effective January 3, 2021, the salary limitation for Executive Level II is <b>\$199,300</b> .

Name	Language
Promotional Items	SAMHSA grant funds may not be used for Promotional Items. Promotional Items include but are not limited to: Clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags.
Acknowledgment of Federal Funding at Conferences and Meetings	<p>When a conference is funded by a grant or cooperative agreement, the recipient must include the following statement in all conference materials (including promotional materials, agenda, and internet sites):</p> <p><i>Funding for this conference was made possible 9in part) by (insert grant or cooperative agreement award number) from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsements by the U.S. Government.</i></p>
Rights in Data and Publications	<p>As applicable, recipients agree to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR 75.322 and the HHS Grants Policy Statement.</p> <p>HCA may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal Award. SAMHSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p>
Mandatory Disclosures	<p>Consistent with 45 CFR 75.113, Subrecipients must disclose, in a timely manner, in writing to HCA and the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to HCA and the HHS OIG at the following addresses:</p> <p>U.S. Department of Health and Human Services</p> <p>Office of Inspector General</p> <p>ATTN: Mandatory Grant Disclosures, Intake Coordinator</p> <p>330 Independence Avenue, SW, Cohen Building Room 5527</p> <p>Washington DC 20201</p>

Name	Language
	<p>Fax: (202) 205-0604 (include "Mandatory Grant Disclosures" in subject line or email)</p> <p><a href="mailto:MandatoryGranteeDisclosures@oig.hhs.gov">MandatoryGranteeDisclosures@oig.hhs.gov</a></p> <p>Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 &amp; 376 and 31 USC 3321)</p>
Lobbying Restrictions	<p>Per 45 CFR §75.215, Subrecipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.</p> <p>U.S.C. &gt; Title 18 &gt; Part I &gt; Chapter 93 &gt; Section 1913, No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his/her request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities.</p> <p>Violations of this section shall constitute as a violation of section 1352 (a) of Title 31.</p>
Drug Free Workplace	<p>The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing this Contract, you agree that the grantee will provide a drug-free workplace and will comply with the requirement to notify NIH if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR part 182; HHS implementing regulations are set forth in 2 CFR part 382.400. All recipients of NIH grant</p>

Name	Language
	funds must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of part 382.
Trafficking Victims Protection Act of 2000 (22 USC 7104(G)), as amended, and 2 CFR Part 175	<p>The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.</p> <p>SAMHSA or HCA may unilaterally terminate this award, without penalty, if a private entity recipient, or a private entity subrecipient, or their employees:</p> <p>a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; b) Procure a commercial sex act during the period of time that the award is in effect; or, c) Use forced labor in the performance of the award or subawards under the award.</p> <p>The text of the full award term is available at 2 C.F.R. § 175.15(b). See <a href="http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf">http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf</a></p>
Confidentiality of Alcohol and Drug Abuse Patient Records	The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
Healthy People 2020	<p>Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at:</p> <p><a href="http://www.healthypeople.gov/">http://www.healthypeople.gov/</a></p>
Accessibility Provisions	Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency.

Name	Language
	<p>The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see:  <a href="http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html">http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html</a>.</p> <p>Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see-  <a href="http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html">http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html</a>.</p> <p>Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <a href="https://www.hhs.gov/civil-rights/index.html">https://www.hhs.gov/civil- rights/index.html</a> or call 1-800-368-1019 or TDD 1-800- 537-7697.</p> <p>Also note that it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at  <a href="https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&amp;lvlid=6">https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&amp;lvlid=6</a>.</p>
Legislative Mandates	<p>Certain statutory provisions under P.L. 115-245, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, Division B, Title V, Title II, General Provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. The full text of P.L. 115-245 is available at <a href="https://www.congress.gov/bill/115th-congress/housebill/6157/text? Format=txt">https://www.congress.gov/bill/115th-congress/housebill/6157/text? Format=txt</a>.</p>
Ad Hoc Submissions	<p>Throughout the project period, SAMHSA may determine that a grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Payroll</li> <li>• Purchase orders</li> <li>• Contract documentation</li> <li>• Proof of project implementation</li> </ul>



**ATTACHMENT 5**  
**Federal Award Identification for Subrecipients**

**Substance Abuse Prevention and Treatment Block Grant - AR**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County Prosecutor's Office
(ii) Subrecipient's unique entity identifier; (DUNS)	60044641
(iii) Federal Award Identification Number (FAIN);	B08T10839777
(iv) Federal Award Date (see §200.39 Federal award date);	9/1/2021 – 9/30/2025
(v) Subaward Period of Performance Start and End Date;	Date of Execution – 6/30/2023
(vi) Amount of Federal Funds Obligated by this action;	\$1,175,834
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$1,175,834
(xiii) Total Amount of the Federal Award;	\$30,586,435
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Block Grants for Prevention and Treatment of Substance Abuse
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 <a href="mailto:Keri.waterland@hca.wa.gov">Keri.waterland@hca.wa.gov</a>
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention and Treatment Block Grant
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimus (10%)

## **SCHEDULE A**

### **Statement of Work**

#### **1. PURPOSE**

HCA intends to enter into an agreement with the contractor for purposes of establishing a LEAD program that adheres to the Core Principles of the LEAD program as noted in SSB 5380 and RCW 71.24.589, which indicates that the HCA must partner with the Public Defender's Association-National Support Bureau (NSB) to expand availability of Law Enforcement Assisted Diversion (LEAD) programs statewide.

#### **2. DEFINITIONS**

"Julota" means a case management electronic record system

"LEAD" or "Law Enforcement Assisted Diversion" means a registered trademark referring to the LEAD program developed by the Seattle-King County LEAD Policy Coordinating Group. The LEAD program is managed by the Public Defender Association, and is recognized as an evidence-based practice in the Washington Medicaid Waiver Toolkit and falls under the Office of Justice Programs standards for evidence-based practices.

"NSB" or "National Support Bureau" means project of the Public Defender Association. The LEAD National Support Bureau will be providing strategic guidance and technical assistance to the pilot sites developing LEAD programs under this Contract. Including providing guidance on implementation with a commitment to the LEAD program's core principles.

"PDA" or "Public Defender Association" means the agency that will provide technical assistance for LEAD site selection, implementation and evaluation.

"ROI" means Release of Information

"URICA" means University of Rhode Island Change Assessment scale

#### **3. HCA RESPONSIBILITIES**

3.1. Provide a contract manager to monitor all progress under the program; and

3.2. Provide timely responses to all inquiries from the Contractor

#### **4. CONTRACTOR RESPONSIBILITIES**

4.1. Coordinate with NSB for purposes of receiving technical assistance;

4.2. Coordinate with NSB for training on policies and protocols for LEAD program referrals and diversion-eligible offenses;

4.3. Coordinate with NSB to develop a LEAD program site evaluation plan with the intent of yielding the following results:

- 4.3.1. Reduction in arrests, time spent in custody, and/or recidivism for program participants;
  - 4.3.2. Increase access to and utilization of non-emergency community behavioral health and/or substance use services;
  - 4.3.3. Reduction in the utilization in emergency services;
  - 4.3.4. Increased resilience, stability, and well-being for program participants; and
  - 4.3.5. Reduction in cost for the justice system in comparison to processing cases as usual through the justice system.
- 4.4. Under this contract provide intensive case management services through a pilot project for the LEAD program which shall adhere to core principles recognized by the law enforcement assisted diversion NSB, the efficacy of which have been demonstrated in peer-reviewed research studies. A major component of this will include the maintaining an executive committee that consists of the following members:
- 4.4.1. Community-based organizations;
  - 4.4.2. Local government;
  - 4.4.3. Law enforcement;
  - 4.4.4. Prosecutors;
  - 4.4.5. Public health experts; and
  - 4.4.6. Organizations led by and representing individuals with past justice system involvement
- 4.5. As a LEAD program pilot site Contractor will:
- 4.5.1. Accept and follow all guidance provided by the PDA technical assistance team to ensure that the pilot site maintains fidelity to the LEAD program model as referenced in RCW 71.24.589.
  - 4.5.2. Ensure that the program is managed to achieve expected outcomes that are measurable and will be used in the future to evaluate the performance and to ensure accountability for the use of this funding. As such, the Contractor will work with the HCA to utilize a Julota data collection and case management system, including being required to:
    - 4.5.2.1. Establish effective workflows for case managers to record needed data in Julota and/or establish any needed data uploads or interfaces to ensure needed data are included in the Julota platform for reporting to the HCA and lessen any duplicate data entry burden on staff (e.g.,

bringing data in from local EHR systems, law enforcement, emergency departments, etc.)

- 4.5.2.2. Implement the referral functions to be used to identify possible participants and track referral data related to participants of the LEAD program, including use of external referral links to receive referrals directly from partners and resources in the community who identify eligible participants
- 4.5.2.3. Utilize the automation of notifications/alerts to maximize on efficiency of communication and processing of data related to the system
- 4.5.2.4. Use the participant surveys to evaluate program participation and engagement
- 4.5.2.5. Implement user accounts with trusted partners who may be providing services to participants on behalf of the case management company so the outcomes of those connections and services can be included in the data provided to HCA
- 4.5.2.6. Collect the number of individuals contacted through law enforcement response and/or social contact referrals;
- 4.5.2.7. Collect the number of individuals admitted into LEAD program;
- 4.5.2.8. Collect aggregated demographics for individuals admitted, including;
  - A. Race;
  - B. Gender;
  - C. Age; and
  - D. Housing status
- 4.5.2.9. Collect aggregated intake form:
  - E. Self-reported behavioral health;
  - F. Employment;
  - G. Family; and
  - H. Financial information
- 4.5.2.10. Collect the following LEAD program evaluation metrics:
  - I. Number of police contacts related to criminal behavior/suspected criminal behavior

- J. Number of arrests-categorize by type
- K. Number of warrants
- L. Number of criminal charges categorize by type
- M. Number of jail bookings
- N. Number of jail bed days
- O. Number of visits to an emergency room
- P. Number of inpatient admits to hospital care
- Q. Number of contacts with fire/EMS
- R. Number of times team meets with participants-categorized by type: case management, peer counseling, brief outreach
- S. Number of referrals to service-categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, etc.
- T. Number of connections to services-categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, etc.
- U. Percentage of individuals that received a URICA score
- V. Participant survey baseline, at six (6) months and one (1) year

4.5.3. The LEAD program manager will provide logistical coordination, support, and record-keeping to the local LEAD advisory board and operational workgroup. Meetings will be scheduled as frequently as necessary to maintain the integrity and operation of the LEAD program; This support shall include, but not limited to the following:

- 4.5.3.1. Set meeting dates and provide coordination of presenters and subject matter experts for the LEAD advisory board and Steering Board meetings;
- 4.5.3.2. Work with PDA program manager to develop and provide an agenda to LEAD advisory board members for each meeting;
- 4.5.3.3. Provide all meeting agendas, minutes and pertinent documents to the PDA program manager and the HCA Contract Manager



- 4.5.3.4. Meet at least monthly with the PDA program manager to ensure communication and coordination of project;
- 4.5.3.5. Upon request, participate in presentations to key state and local stakeholders on progress;
- 4.5.3.6. Create and/or renew MOUs to facilitate information sharing; and
- 4.5.3.7. Provide a satisfaction survey to participants, officers, and stakeholders within the last quarter of the program.
- 4.5.4. Operational workgroup meetings are for the purposes of coordinating care for LEAD program participants and only those participants that have signed an ROI with operational workgroups members are to be discussed during the workgroup meetings.
- 4.5.5. Coordinate, schedule and conduct operational workgroup meetings, as needed, and is to include the following participants:
  - 4.5.5.1. Law Enforcement Officers referring to the LEAD program
  - 4.5.5.2. Prosecutors considering cases involving LEAD program participants
  - 4.5.5.3. Case Managers assisting LEAD program participants
  - 4.5.5.4. LEAD program project managers
- 4.5.6. The LEAD program manager will participate in technical assistance calls with the PDA program manager, at least once a month, to maintain the integrity and fidelity of the LEAD program.
- 4.5.7. Maintain employees and/or contract clinical support positions, to include the following:
  - 4.5.7.1. Outreach Coordinator;
  - 4.5.7.2. Clinical Supervisor, and
  - 4.5.7.3. Case Manager.
- 4.5.8. Coordinate, schedule, and conduct LEAD steering committee and advisory board meetings as needed to maintain the integrity and fidelity of the LEAD program.
- 4.5.9. Provide referrals to local community agencies for intensive case management services, including but not limited to substance use, mental health, and behavioral health assessment and treatment.

- 4.5.10. Monitor to ensure LEAD program has made at least 350 referrals of new, previously referred or previously discharged participants, admit at least the minimum required to maintain a case load of at least 25 active participants per case manager, with at least 4 case managers, by June 30, 2023.
- 4.5.11. Submit Monthly Reports as detailed in the Deliverable Table with the invoice to the HCA Contract Manager, including but not limited to: how many individuals referred, number of active participants, current barriers, attempts to resolve barriers, any staffing changes, any success stories, and TA needs.
- 4.5.12. Ensure travel per diem, computers, office supplies and all the other supplies and tools necessary to perform defined duties are provided to LEAD program staff and/or contract staff.

## 5. Deliverables Table

#	Deliverable	Due Date	Payment
1	Renew contract with Julota Case Management and Data Collection Software platform.	Within thirty (45) days of the Date of Execution	One-time payment of \$47,695
2	Minutes detailing all local LEAD advisory board and operational workgroup meetings. Up to 63 meetings throughout the duration of this Contract. (averaging 3 meetings per month).	Due the 15 <sup>th</sup> of each month, following the month of service	\$4,000 per meeting, not to exceed \$252,000
3	Monthly Technical Assistance (TA) calls with the PDA Technical Assistance Team.	No less than one (1) call per month.	\$10,000 per month, not to exceed \$210,000
4	Monthly Data Collection Report	Due the 15 <sup>th</sup> of each month, following the month of service	\$15,000 per month, not to exceed \$315,000
5	LEAD Monthly Progress Report	Due the 15 <sup>th</sup> of each month, following the month of service	\$10,000 per month, not to exceed \$210,000
6	Successfully refer a minimum of 350 individuals, admit at least the minimum required to maintain an average case load of at least 25 per case manager with a minimum	June 30, 2023	One-time payment of \$23,556

#	Deliverable	Due Date	Payment
	of 4 case managers, each year.		
7	Indirect (administrative) costs: Only 10% of direct costs.	Monthly, and no later than 60 days following the Contract end date.	10% of direct costs- up to \$117,583
<b>Maximum Consideration for HCA Contract K5735</b>			<b>\$1,175,834</b>



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-092

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<b>File ID:</b>	AB2022-092	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<b>Entered by:</b>	ldevries@co.whatcom.wa.us		
<b>Department:</b>	Prosecuting Attorney's Office	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee				<b>Final Action:</b>
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Sea Mar Community Health Centers to furnish goods and services necessary to accomplish activities under the Law Enforcement Assisted Diversion (LEAD) program during the contract term 10/1/21 - 03/31/22 and not to exceed the amount of \$371,583.00

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

n/a

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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 information form, Proposed contract

## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Eric Richey, Whatcom County Prosecutor

**RE:** Sea Mar Community Health Centers – Law Enforcement Assisted Diversion (LEAD) Program Contract, Amendment #3

**DATE:** January 28, 2022

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- **Background and Purpose**

The Prosecuting Attorney's Office has been awarded a new 2-year grant through the Washington State Health Care Authority and has an existing 3-year grant through the U.S. Department of Justice to provide funding for the Law Enforcement Assisted Diversion (LEAD) program in Whatcom County. The LEAD program is a community-based diversion program with the goal of improving public safety and public order, and reducing unnecessary criminal legal system involvement of people who participate in the program. Sea Mar has been providing intensive case management services to LEAD members. This amendment retroactively extends the contract for six months.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$371,583 during the contract period (10/01/2021 – 3/31/2022). The funding for this contract is provided by the Washington State Health Care Authority and the U.S. Department of Justice.

Please contact Vanessa Martin at [vmartin@co.whatcom.wa.us](mailto:vmartin@co.whatcom.wa.us) if you have any questions regarding this contract.

Thank you kindly.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. \_\_\_\_\_

Originating Department: _____	
Division/Program: <i>(i.e. Dept. Division and Program)</i> _____	
Contract or Grant Administrator: _____	
Contractor's / Agency Name: _____	
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)) <b>Original Contract #:</b> _____	
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 <b>If yes, Whatcom County grant contract number(s):</b> _____	
Is this contract the result of a RFP or Bid process?    Contract Yes    No    If yes, RFP and Bid number(s): _____ Cost Center: _____	
Is this agreement excluded from E-Verify?    No    Yes    If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional.    Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ _____ 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.
Summary of Scope: _____	
Term of Contract: _____ <b>Expiration Date:</b> _____	

Contract Routing:	1. Prepared by: _____ Date: _____ 2. Attorney signoff: _____ Date: _____ 3. AS Finance reviewed: _____ Date: _____ 4. IT reviewed (if IT related): _____ Date: _____ 5. Contractor signed: _____ Date: _____ 6. Submitted to Exec.: _____ Date: _____ 7. Council approved (if necessary): _____ Date: _____ 8. Executive signed: _____ Date: _____ 9. Original to Council: _____ Date: _____	
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Amendment No. 3  
Whatcom County Contract No. 202005001  
CONTRACT BETWEEN WHATCOM COUNTY AND  
**Sea Mar Community Health Centers**

THIS AMENDMENT is to the Contract between Whatcom County and Sea Mar Community Health Centers, dated May 5, 2020 designated "Whatcom County Contract No.202005001". In consideration of the mutual benefits to be derived, the parties agree to the following:

Extend the term of this Agreement through March 31, 2022, and increases the maximum consideration by \$371,583 to a total consideration of \$1,124,543.

This Amendment replaces Exhibit A - Scope of Work, Section IV – Program Requirements (A) to update staffing and case load requirements.

This Amendment replaces Exhibit B-1 – Washington State Health Care Authority (HCA) Contract with Washington State Health Care Authority (HCA) Contract K5735 for the extended contract period. Contractor to carry out program operations, staffing, and compliance with all HCA contract requirements.

This Amendment replaces Exhibit C – Compensation with Exhibit C-1 for the extended contract period.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: October 1, 2021, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and Sea Mar Community Health Centers have executed this Amendment on the date and year below written.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR:**

CONTRACTOR NAME

\_\_\_\_\_  
*Rogelio Riojas, President & CEO*

STATE OF WASHINGTON )

) ss.

COUNTY OF WHATCOM )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the \_\_\_\_\_ 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,

\_\_\_\_\_  
printed name,  
residing at \_\_\_\_\_.

My commission expires \_\_\_\_\_.

**WHATCOM COUNTY:**

Recommended for Approval:

\_\_\_\_\_  
Eric Richey

\_\_\_\_\_  
Date

**Approved as to form:**

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

\_\_\_\_\_  
Date

**Approved:**

Accepted for Whatcom County:

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

Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON )

) ss

COUNTY OF WHATCOM )

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
\_\_\_\_\_, printed name.

residing at \_\_\_\_\_. My commission  
expires \_\_\_\_\_.

**CONTRACTOR INFORMATION:**

Sea Mar Community Health Centers  
Rogelio Riojas, President & CEO  
1040 South Henderson Street  
Seattle, WA 98108  
(253) 763-5277

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

**IV. Program Requirements**

**A. Staffing**

The Contractor will provide staffing sufficient to operate the LEAD program. Adequate capacity for operations must include program management and supervision, accounting and performance management, care coordination and case management, community engagement, participant programming facilitation, and collaboration with the LEAD advisory groups.

Hub operations and care coordination/case management will be provided by a multidisciplinary team of behavioral health and healthcare professionals. The Contractor shall ensure that LEAD program staff have the demonstrated ability to work with complex individuals who experience acute symptoms and lifestyle patterns that are disruptive to their health and well-being. Requirements for LEAD Hub program staff follow:

1. Retain program staff to provide Program Management, Care Coordination/Case Management capacity.
  - a. Program Management shall be provided by a staff member, up to .5 FTE, with the demonstrated history and qualifications to manage a comprehensive program involving multiple community partners and complex participants, and clinical supervision.
  - b. Care Coordination and Case Management/Outreach services shall be provided by no less than six (6) full-time staff members qualified to work with highly complex individuals, with specialized training in behavioral health. One of the full-time staff will act as LEAD Supervisor and the County prefers that this position holds a Master's level degree in a behavioral health or other relevant field. The County prefers, but not required, that the remaining case management staff hold a bachelor's degree or higher in a behavioral health, or other relevant field. A waiver of any of the educational or professional requirements requires approval by the County and will be considered as requested by the Contractor.
  - c. No less than four (4) staff members must carry a full caseload of approximately 25 LEAD participants each and the LEAD Supervisor may carry a partial caseload of approximately 5 participants.

**EXHIBIT "B"**  
(WASHINGTON STATE HEALTH CARE AUTHORITY CONTRACT)

	<b>PROFESSIONAL SERVICES CONTRACT for LEAD Expansion Services</b>	HCA Contract Number: K5735
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**THIS CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and Whatcom County Prosecuting Attorney's Office, (Contractor).

CONTRACTOR NAME Whatcom County Prosecuting Attorney's Office		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS   Street 311 Grand Ave.	City Bellingham	State WA	Zip Code 98225	
CONTRACTOR CONTACT Vanessa Martin	CONTRACTOR TELEPHONE 360-778-5716	CONTRACTOR E-MAIL ADDRESS <a href="mailto:vmartin@co.whatcom.wa.us">vmartin@co.whatcom.wa.us</a>		
Is Contractor a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.959	FFATA Form Required <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

HCA PROGRAM	HCA DIVISION/SECTION Division of Behavioral Health and Recovery (DBHR)
HCA CONTACT NAME AND TITLE  Michele Gayle, Contract Manager	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
HCA CONTACT TELEPHONE (360) 725-9817	HCA CONTACT E-MAIL ADDRESS <a href="mailto:michele.gayle@hca.wa.gov">michele.gayle@hca.wa.gov</a>

CONTRACT START DATE October 1, 2021	CONTRACT END DATE June 30, 2023	TOTAL MAXIMUM CONTRACT AMOUNT \$1,175,834
<b>PURPOSE OF CONTRACT:</b> Provide intensive case management services to recently arrested and/or high risk for arrest individuals through the expansion of the WA State LEAD program throughout Whatcom County.		

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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### **Attachments**

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### **Schedules**

Schedule A: Statement of Work (SOW) LEAD Expansion Services



## Contract #K5735 for LEAD Expansion Services

### Recitals

The state of Washington, acting by and through the Health Care Authority (HCA), seeks client services for LEAD Expansion Services; and

WHEREAS, client services are exempt from competitive solicitation (RCW 39.26.125(6)) and Whatcom County Prosecuting Attorney's Office (Contractor) seeks to provide such services.

HCA has determined that entering into a Contract with Whatcom County Prosecuting Attorney's Office will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to Whatcom County Prosecuting Attorney's Office this Contract, the terms and conditions of which will govern Contractor's providing to HCA the LEAD Expansion Services.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

### 1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

### DEFINITIONS

**"Authorized Representative"** means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

**"Breach"** means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

**"Business Associate"** means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

**"Business Days and Hours"** means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**“Centers for Medicare and Medicaid Services” or “CMS”** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

**“CFR”** means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

**“Confidential Information”** means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

**“Contract”** means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

**“Contractor”** means **Whatcom County Prosecuting Attorney’s Office**, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

**“Covered entity”** means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

**“Data”** means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

**“Effective Date”** means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“HCA Contract Manager”** means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

**“Health Care Authority” or “HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

**“Overpayment”** means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

**“Proprietary Information”** means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“Protected Health Information” or “PHI”** means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

**“RCW”** means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

**“Statement of Work” or “SOW”** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

**“Subcontractor”** means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

**“Subrecipient”** means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency. As in 45 C.F.R. 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 C.F.R. 200.93, or any successor or replacement to such definition, for any other federal award. See OMB circular a-133 for additional details.

**“USC”** means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

**“WAC”** means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

## **SPECIAL TERMS AND CONDITIONS**

### **PERFORMANCE EXPECTATIONS**

Expected performance under this Contract includes, but is not limited to, the following:

Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;

Use of professional judgment;

Collaboration with HCA staff in Contractor's conduct of the services;

Conformance with HCA directions regarding the delivery of the services;

Timely, accurate and informed communications;

Regular completion and updating of project plans, reports, documentation and communications;

Regular, punctual attendance at all meetings; and

Provision of high quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

### **TERM**

The initial term of the Contract will commence on **October 1, 2021** and continue through **June 30, 2023**, unless terminated sooner as provided herein.

This Contract may be extended in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

### **COMPENSATION**

The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is **\$1,175,834**, and includes any allowable expenses.

Contractor's compensation for services rendered will be based on the following rates or in accordance with the following terms.

Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor. If Contractor is required by HCA to travel, any such travel must be authorized in writing by the **HCA Contract Manager** and reimbursement will be at rates not to exceed the then-current rules, regulations, and guidelines for State employees published by the Washington State Office of Financial Management in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/10.htm>); reimbursement will not exceed expenses actually incurred.

To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses and receipts for any expenses of \$50 or more.

Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: 93.959, Substance Abuse Block Grant, B08T10839777. Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: *Federal Compliance, Certification and Assurances*, attached.

## INVOICE AND PAYMENT

Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: [HCAAdminAccountsPayable@hca.wa.gov](mailto:HCAAdminAccountsPayable@hca.wa.gov) with a cc to HCA Contract Manager. Include the HCA Contract number in the subject line of the email.

Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.

Contractor must submit properly itemized invoices to include the following information, as applicable:

HCA Contract number **K5735**;

Contractor name, address, phone number;

Description of Services;

Deliverable number;

Date(s) of delivery;

Net invoice price for each item;

Applicable taxes;

Total invoice price; and

Payment terms and any available prompt payment discount.

HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.

Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

## **CONTRACTOR AND HCA CONTRACT MANAGERS**

Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.

HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.



The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

<b>CONTRACTOR</b>		<b>Health Care Authority</b>	
<b>Contract Manager Information</b>		<b>Contract Manager Information</b>	
Name:	Vanessa Martin	Name:	Michele Gayle
Title:		Title:	Contract Manager
Address:	311 Grand Ave. Bellingham, WA 98225	Address:	626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
Phone:	360-778-5716	Phone:	360-725-9817
Email:	<a href="mailto:vmartin@co.whatcom.wa.us">vmartin@co.whatcom.wa.us</a>	Email:	<a href="mailto:michele.gayle@hca.wa.gov">michele.gayle@hca.wa.gov</a>

## KEY STAFF

Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff must not be changed during the term of the Statement of Work (SOW) from the people who were described in the Response for the first SOW or those Key Staff initially assigned to subsequent SOWs, without the prior written approval of HCA until completion of their assigned tasks.

During the term of the Statement of Work (SOW), HCA reserves the right to approve or disapprove Contractor's Key Staff assigned to this Contract, to approve or disapprove any proposed changes in Contractor's Key Staff, or to require the removal or reassignment of any Contractor staff found unacceptable by HCA, subject to HCA's compliance with applicable laws and regulations. Contractor must provide a resume to HCA of any replacement Key Staff and all staff proposed by Contractor as replacements for other staff must have comparable or greater skills for performing the activities as performed by the staff being replaced.

## LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

In the case of notice to the Contractor, send notification to the contact listed on Page 1 of this Contract

In the case of notice to HCA:

**Attention:** Contracts Administrator  
Health Care Authority  
Division of Legal Services  
Post Office Box 42702  
Olympia, WA 98504-2702  
CONTRACTS@hca.wa.gov

Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

The notice address and information provided above may be changed by written notice of the change given as provided above.

## **INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE**

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

Applicable Federal and State of Washington statutes and regulations;

Recitals

Special Terms and Conditions;

General Terms and Conditions;

Attachment 1: Confidential Information Security Requirements;

Attachment 2: Federal Compliance, Certifications and Assurances;

Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form;

Schedule A(s): Statement(s) of Work;

Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## **INSURANCE**

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.

The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:

Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.

Notification and call center services for individuals affected by a Breach.

Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.

Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

The policy must be maintained for the term of this Agreement and three (3) years following its termination.

## **GENERAL TERMS AND CONDITIONS**

### **ACCESS TO DATA**

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

### **ADVANCE PAYMENT PROHIBITED**

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

### **AMENDMENTS**

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

### **ASSIGNMENT**

Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.37, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment,

transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

## **ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

## **CHANGE IN STATUS**

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

## **CONFIDENTIAL INFORMATION PROTECTION**

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).

HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract

and demand for return of all Confidential Information, monetary damages, or penalties.

The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

## **CONFIDENTIAL INFORMATION SECURITY**

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

## **CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION**

Contractor must notify the HCA Privacy Officer ([PrivacyOfficer@hca.wa.gov](mailto:PrivacyOfficer@hca.wa.gov)) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.

Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.

If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.

In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).

Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.



Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

## **CONTRACTOR'S PROPRIETARY INFORMATION**

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

## **COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## **DEBARMENT**

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

## **DISPUTES**

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be

resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

A party's request for a dispute resolution must:

- Be in writing;

- Include a written description of the dispute;

- State the relative positions of the parties and the remedy sought;

- State the Contract Number and the names and contact information for the parties;

This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

## **ENTIRE AGREEMENT**

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.44 *Warranties*.

## **FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)**

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have

one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at [www.dnb.com](http://www.dnb.com).

Information about Contractor and this Contract will be made available on [www.uscontractorregistration.com](http://www.uscontractorregistration.com) by HCA as required by P.L. 109-282. HCA's Attachment 3: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

## **FORCE MAJEURE**

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

## **FUNDING WITHDRAWN, REDUCED OR LIMITED**

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

Terminate this Contract pursuant to Section 4.41.3, *Termination for Non-Allocation of Funds*;

Renegotiate the Contract under the revised funding conditions; or

Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract

by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

## **GOVERNING LAW**

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11<sup>th</sup> Amendment to the United States Constitution.

## **HCA NETWORK SECURITY**

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

## **INDEMNIFICATION**

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.8 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

## **INDEPENDENT CAPACITY OF THE CONTRACTOR**

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

## **INDUSTRIAL INSURANCE COVERAGE**

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

## **LEGAL AND REGULATORY COMPLIANCE**

During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

Failure to comply with any provisions of this section may result in Contract termination.

## **LIMITATION OF AUTHORITY**

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

## **NO THIRD-PARTY BENEFICIARIES**

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

## **NONDISCRIMINATION**

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

## OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 *Disputes*.

## PAY EQUITY

- 1.1.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 1.1.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 1.1.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 1.1.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 1.1.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

## PUBLICITY

The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity



materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

## **RECORDS AND DOCUMENTS REVIEW**

The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

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

## **REMEDIES NON-EXCLUSIVE**

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

## **RIGHT OF INSPECTION**

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

## **RIGHTS IN DATA/OWNERSHIP**

HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not

limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.

Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

## **RIGHTS OF STATE AND FEDERAL GOVERNMENTS**

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or

otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

## **SEVERABILITY**

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

## **SITE SECURITY**

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

## **SUBCONTRACTING**

Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

## **SUBRECIPIENT**

### **General**

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;

Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;

Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and

Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

### **Single Audit Act Compliance**

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

Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

### Overpayments

If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor will refund the full amount to HCA as provided in Section 4.27 *Overpayments to Contractors*.

## SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

## TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## TERMINATION

### TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

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

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

#### TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

#### TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

#### TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the



effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

#### **TERMINATION FOR CONFLICT OF INTEREST**

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

#### **TERMINATION PROCEDURES**

Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

Stop work under the Contract on the date of, and to the extent specified in, the notice;

Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;

Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its

discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;

Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;

Complete performance of any part of the work that was not terminated by HCA; and

Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

## **WAIVER**

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

## **WARRANTIES**

Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.



## **ATTACHMENT 1**

### **Confidential Information Security Requirements**

#### **Definitions**

In addition to the definitions set out in Section 2 of this Contract **K5735** for **LEAD Expansion Services**, the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
  - i. Passwords for external authentication must be a minimum of 10 characters long.
  - ii. Passwords for internal authentication must be a minimum of 8 characters long.
  - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

### **Confidential Information Transmitting**

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

### **Protection of Confidential Information**

The Contractor agrees to store Confidential Information as described:

- a. Data at Rest:
  - i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
  - ii. Data stored on Portable/Removable Media or Devices:
    - Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
    - HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
      - 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
      - 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
      - 3. Keeping devices in locked storage when not in use;

4. Using check-in/check-out procedures when devices are shared;
  5. Maintain an inventory of devices; and
  6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

### **Confidential Information Segregation**

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
  - i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
  - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
  - iii. in a database that will contain only HCA Data; or
  - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
  - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

### **Confidential Information Shared with Subcontractors**

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.



## Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

## ATTACHMENT 2

### Federal Compliance, Certifications and Assurances

- I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: **Michele Gayle**.

Source of Funds **SABG-AR**: This Contract is being funded partially or in full through Cooperative Contract number **B08T10839777**, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.959** in the amount of **\$1,175,834**. The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract **K5735**.

Period of Availability of Funds **SABG-AR**: Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in **B08T10839777** unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.

Single Audit Act: This section applies to subrecipients only. Subrecipient (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A Subrecipient who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.

Modifications: This Contract may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.

1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
  - i. Deviations from the budget and Project plan.
  - ii. Change in scope or objective of the Contract.
  - iii. Change in a key person specified in the Contract.
  - iv. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
  - v. Need for additional funding.
  - vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
  - vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

**Sub-Contracting**: The Contractor or Subrecipient shall not enter into a sub-contract for any of the work performed under this Contract without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the Contract pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other

project Federal, state, and local requirements.

**Condition for Receipt of Health Care Authority Funds:** Funds provided by Health Care Authority to the Contractor or Subrecipient under this Contract may not be used by the Contractor or Subrecipient as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.

**Unallowable Costs:** The Contractor or Subrecipient's expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this Contract.

**Supplanting Compliance: SABG:** If SABG funds support this Contract, the Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).

**Citizenship/Alien Verification/Determination:** The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

**Federal Compliance:** The Contractor or Subrecipient shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.

**Civil Rights and Non-Discrimination Obligations:** During the performance of this Contract, the Contractor or Subrecipient shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101- 6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>.

#### **HCA Federal Compliance Contact Information**

Washington State Health Care Authority

Post Office Box 42710

Olympia, Washington 98504-2710

- II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee, **Whatcom County Prosecuting Attorney's Office**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

	OMB CIRCULAR		
ENTITY TYPE	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS

State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501
Non-Profit Organizations and Non-Profit Hospitals	
Colleges or Universities and Affiliated Hospitals	
For-Profit Organizations	

III. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES** - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by the Washington State Health Care Authority.

- a. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION** : The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Contractor or Subrecipient not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause above certification in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:** The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; Establishing an ongoing drug-free awareness program to inform employees about
  - i. The dangers of drug abuse in the workplace;
  - ii. The contractor's policy of maintaining a drug-free workplace;
  - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

- iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
2. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (I) above;
3. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
4. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
5. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—
  - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
6. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

**Legal Services Manager**

WA State Health Care Authority  
 PO Box 42700  
 Olympia, WA 98504-2700

**CERTIFICATION REGARDING LOBBYING:** Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative Contracts from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative Contract. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative Contract must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative Contracts EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.

2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
3. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.

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

**CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA):** The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

**CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:** Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

**The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.**

## **CERTIFICATION REGARDING OTHER RESPONSIBILITY MATTERS**

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, HCA may terminate this transaction for cause or default.

### **CONTRACTOR SIGNATURE REQUIRED**

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL:	TITLE:
PLEASE ALSO PRINT OR TYPE NAME:	
ORGANIZATION NAME: (if applicable)	DATE:



# ATTACHMENT 3

## Federal Funding Accountability and Transparency Act (FFATA)

### Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at [www.dnb.com](http://www.dnb.com).

Required Information about your organization and this contract will be made available on USASpending.gov by HCA as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at <https://www.uscontractorregistration.com/>.

#### CONTRACTOR

1. Legal Name: Whatcom County Prosecuting Attorney's Office	2. DUNS Number: 60044641
3. Principle Place of Performance: 311 Grand Ave. #201	3a. Congressional District
3b. City: Bellingham	3c. State: WA
3d. Zip+4: 9822	3e. Country

4. Are you registered in CCR (<https://www.uscontractorregistration.com/>)? ☐ YES (skip to page 2. Sign, date and return) ☐ NO

In the preceding fiscal year did your organization:

- a. Receive 80% or more of annual gross revenue from procurement federal contracts, Subcontracts, grants, loans, sub-grants, and/or cooperative agreements; **and**
- b. \$25,000,000 or more in annual gross revenues from federal procurement contracts, Subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and**
- c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330

☐ NO (skip the remainder of this section - Sign, date and return)

☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).

Name Of Official	Total Compensation
1.	
2.	
3.	
4.	
5.	

**Note:** "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c) (2))

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative	Date
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***HCA will not endorse the Contractor's sub-award until this form is completed and returned.***

**FOR HEALTH CARE AUTHORITY USE ONLY**

HCA Contract Number: <b>K5735</b>
FAIN: B08T10839777
Sub-award Project Description (see instructions and examples below)  Provide intensive case management services to recently arrested and/or high risk for arrest individuals through the expansion of the WA State LEAD program throughout Whatcom County.

**Instructions for Sub-award Project Description:**

In the first line of the description provide a title for the sub-award that captures the main purpose of the Subrecipients work. Then, indicate the name of the Subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

**Example of a Sub-award Project Description:**

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

## ATTACHMENT 4

### Substance Abuse and Mental Health Services Agency (SAMHSA) Award Terms

By drawing or otherwise obtaining funds as a subawardee or contractor of a non-federal entity drawing or otherwise obtaining funds from SAMHSA, a branch of the United States Department of Health and Human Services (HHS), you agree to the following pass-through terms and conditions.

Name	Language
Acceptance of the Terms of an Award	This Subaward is subject to the SAMHSA Fiscal Year 2021 – Award Standard Terms, included directly, or incorporated by reference on the Notice of Award (NoA) support the grant.
Non-Supplanting	<p>Federal award funds must supplement, not supplant, nonfederal funds. All recipients who receive awards under programs that prohibit supplanting by law must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt of expected receipt of federal funds.</p> <p>Block grant funds (SABG and MHBG) will not be used to supplant state funding of alcohol and other drug prevention programs. See 45 CFR § 98.123</p>
Unallowable Costs	All costs incurred prior to the award issue date and costs not consistent with the funding opportunity, 45 CFR Part 75, and the HHS Grants Policy Statement, are not allowable under this subaward.
Marijuana Restrictions	Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana treatment using marijuana. Treatment in this context includes the treatment or opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. See, e.g., 45 CFR 75.300(a); 21 USC 812(c)(10) and 841. This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substances under the federal law.
Executive Pay	The Consolidated Appropriations Act, 2021 (Public Law 116-260), signed into law on December 27, 2020 restricts the amount of direct salary to Executive Level II of the Federal Executive Pay scale. Effective January 3, 2021, the salary limitation for Executive Level II is <b>\$199,300</b> .

Name	Language
Promotional Items	SAMHSA grant funds may not be used for Promotional Items. Promotional Items include but are not limited to: Clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags.
Acknowledgment of Federal Funding at Conferences and Meetings	<p>When a conference is funded by a grant or cooperative agreement, the recipient must include the following statement in all conference materials (including promotional materials, agenda, and internet sites):</p> <p><i>Funding for this conference was made possible 9in part) by (insert grant or cooperative agreement award number) from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsements by the U.S. Government.</i></p>
Rights in Data and Publications	<p>As applicable, recipients agree to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR 75.322 and the HHS Grants Policy Statement.</p> <p>HCA may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal Award. SAMHSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.</p>
Mandatory Disclosures	<p>Consistent with 45 CFR 75.113, Subrecipients must disclose, in a timely manner, in writing to HCA and the HHS Office of Inspector General (OIG), all information related to violations, or suspected violations, of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to HCA and the HHS OIG at the following addresses:</p> <p>U.S. Department of Health and Human Services</p> <p>Office of Inspector General</p> <p>ATTN: Mandatory Grant Disclosures, Intake Coordinator</p> <p>330 Independence Avenue, SW, Cohen Building Room 5527</p> <p>Washington DC 20201</p>

Name	Language
	<p>Fax: (202) 205-0604 (include “Mandatory Grant Disclosures” in subject line or email)</p> <p><a href="mailto:MandatoryGranteeDisclosures@oig.hhs.gov">MandatoryGranteeDisclosures@oig.hhs.gov</a></p> <p>Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 &amp; 376 and 31 USC 3321)</p>
Lobbying Restrictions	<p>Per 45 CFR §75.215, Subrecipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.</p> <p>U.S.C. &gt; Title 18 &gt; Part I &gt; Chapter 93 &gt; Section 1913, No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his/her request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities.</p> <p>Violations of this section shall constitute as a violation of section 1352 (a) of Title 31.</p>
Drug Free Workplace	<p>The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing this Contract, you agree that the grantee will provide a drug-free workplace and will comply with the requirement to notify NIH if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR part 182; HHS implementing regulations are set forth in 2 CFR part 382.400. All recipients of NIH grant</p>

Name	Language
	funds must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of part 382.
Trafficking Victims Protection Act of 2000 (22 USC 7104(G)), as amended, and 2 CFR Part 175	<p>The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.</p> <p>SAMHSA or HCA may unilaterally terminate this award, without penalty, if a private entity recipient, or a private entity subrecipient, or their employees:</p> <p>a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; b) Procure a commercial sex act during the period of time that the award is in effect; or, c) Use forced labor in the performance of the award or subawards under the award.</p> <p>The text of the full award term is available at 2 C.F.R. § 175.15(b). See <a href="http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf">http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf</a></p>
Confidentiality of Alcohol and Drug Abuse Patient Records	The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Subrecipient is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
Healthy People 2020	<p>Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at:</p> <p><a href="http://www.healthypeople.gov/">http://www.healthypeople.gov/</a></p>
Accessibility Provisions	Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency.

Name	Language
	<p>The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see:  <a href="http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html">http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html</a>.</p> <p>Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see-  <a href="http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html">http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html</a>.</p> <p>Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <a href="https://www.hhs.gov/civil-rights/index.html">https://www.hhs.gov/civil- rights/index.html</a> or call 1-800-368-1019 or TDD 1-800- 537-7697.</p> <p>Also note that it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at  <a href="https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&amp;lvlid=6">https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&amp;lvlid=6</a>.</p>
Legislative Mandates	<p>Certain statutory provisions under P.L. 115-245, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, Division B, Title V, Title II, General Provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. The full text of P.L. 115-245 is available at <a href="https://www.congress.gov/bill/115th-congress/housebill/6157/text?Format=txt">https://www.congress.gov/bill/115th-congress/housebill/6157/text? Format=txt</a>.</p>
Ad Hoc Submissions	<p>Throughout the project period, SAMHSA may determine that a grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Payroll</li> <li>• Purchase orders</li> <li>• Contract documentation</li> <li>• Proof of project implementation</li> </ul>



**ATTACHMENT 5**  
**Federal Award Identification for Subrecipients**

**Substance Abuse Prevention and Treatment Block Grant - AR**

(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Whatcom County Prosecutor's Office
(ii) Subrecipient's unique entity identifier; (DUNS)	60044641
(iii) Federal Award Identification Number (FAIN);	B08T10839777
(iv) Federal Award Date (see §200.39 Federal award date);	9/1/2021 – 9/30/2025
(v) Subaward Period of Performance Start and End Date;	Date of Execution – 6/30/2023
(vi) Amount of Federal Funds Obligated by this action;	\$1,175,834
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$1,175,834
(xiii) Total Amount of the Federal Award;	\$30,586,435
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Block Grants for Prevention and Treatment of Substance Abuse
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	SAMHSA WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 <a href="mailto:Keri.waterland@hca.wa.gov">Keri.waterland@hca.wa.gov</a>
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention and Treatment Block Grant
(xii) Identification of whether the award is R&D; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (10%)

## **SCHEDULE A**

### **Statement of Work**

#### **1. PURPOSE**

HCA intends to enter into an agreement with the contractor for purposes of establishing a LEAD program that adheres to the Core Principles of the LEAD program as noted in SSB 5380 and RCW 71.24.589, which indicates that the HCA must partner with the Public Defender's Association-National Support Bureau (NSB) to expand availability of Law Enforcement Assisted Diversion (LEAD) programs statewide.

#### **2. DEFINITIONS**

"Julota" means a case management electronic record system

"LEAD" or "Law Enforcement Assisted Diversion" means a registered trademark referring to the LEAD program developed by the Seattle-King County LEAD Policy Coordinating Group. The LEAD program is managed by the Public Defender Association, and is recognized as an evidence-based practice in the Washington Medicaid Waiver Toolkit and falls under the Office of Justice Programs standards for evidence-based practices.

"NSB" or "National Support Bureau" means project of the Public Defender Association. The LEAD National Support Bureau will be providing strategic guidance and technical assistance to the pilot sites developing LEAD programs under this Contract. Including providing guidance on implementation with a commitment to the LEAD program's core principles.

"PDA" or "Public Defender Association" means the agency that will provide technical assistance for LEAD site selection, implementation and evaluation.

"ROI" means Release of Information

"URICA" means University of Rhode Island Change Assessment scale

#### **3. HCA RESPONSIBILITIES**

3.1. Provide a contract manager to monitor all progress under the program; and

3.2. Provide timely responses to all inquiries from the Contractor

#### **4. CONTRACTOR RESPONSIBILITIES**

4.1. Coordinate with NSB for purposes of receiving technical assistance;

4.2. Coordinate with NSB for training on policies and protocols for LEAD program referrals and diversion-eligible offenses;

- 4.3. Coordinate with NSB to develop a LEAD program site evaluation plan with the intent of yielding the following results:
  - 4.3.1. Reduction in arrests, time spent in custody, and/or recidivism for program participants;
  - 4.3.2. Increase access to and utilization of non-emergency community behavioral health and/or substance use services;
  - 4.3.3. Reduction in the utilization in emergency services;
  - 4.3.4. Increased resilience, stability, and well-being for program participants; and
  - 4.3.5. Reduction in cost for the justice system in comparison to processing cases as usual through the justice system.
- 4.4. Under this contract provide intensive case management services through a pilot project for the LEAD program which shall adhere to core principles recognized by the law enforcement assisted diversion NSB, the efficacy of which have been demonstrated in peer-reviewed research studies. A major component of this will include the maintaining an executive committee that consists of the following members:
  - 4.4.1. Community-based organizations;
  - 4.4.2. Local government;
  - 4.4.3. Law enforcement;
  - 4.4.4. Prosecutors;
  - 4.4.5. Public health experts; and
  - 4.4.6. Organizations led by and representing individuals with past justice system involvement
- 4.5. As a LEAD program pilot site Contractor will:
  - 4.5.1. Accept and follow all guidance provided by the PDA technical assistance team to ensure that the pilot site maintains fidelity to the LEAD program model as referenced in RCW 71.24.589.
  - 4.5.2. Ensure that the program is managed to achieve expected outcomes that are measurable and will be used in the future to evaluate the performance and to ensure accountability for the use of this funding. As such, the Contractor will work with the HCA to utilize a Julota data collection and case management system, including being required to:

- 4.5.2.1. Establish effective workflows for case managers to record needed data in Julota and/or establish any needed data uploads or interfaces to ensure needed data are included in the Julota platform for reporting to the HCA and lessen any duplicate data entry burden on staff (e.g., bringing data in from local EHR systems, law enforcement, emergency departments, etc.)
- 4.5.2.2. Implement the referral functions to be used to identify possible participants and track referral data related to participants of the LEAD program, including use of external referral links to receive referrals directly from partners and resources in the community who identify eligible participants
- 4.5.2.3. Utilize the automation of notifications/alerts to maximize on efficiency of communication and processing of data related to the system
- 4.5.2.4. Use the participant surveys to evaluate program participation and engagement
- 4.5.2.5. Implement user accounts with trusted partners who may be providing services to participants on behalf of the case management company so the outcomes of those connections and services can be included in the data provided to HCA
- 4.5.2.6. Collect the number of individuals contacted through law enforcement response and/or social contact referrals;
- 4.5.2.7. Collect the number of individuals admitted into LEAD program;
- 4.5.2.8. Collect aggregated demographics for individuals admitted, including;
  - A. Race;
  - B. Gender;
  - C. Age; and
  - D. Housing status
- 4.5.2.9. Collect aggregated intake form:
  - E. Self-reported behavioral health;
  - F. Employment;
  - G. Family; and

H. Financial information

4.5.2.10. Collect the following LEAD program evaluation metrics:

- I. Number of police contacts related to criminal behavior/suspected criminal behavior
- J. Number of arrests-categorize by type
- K. Number or warrants
- L. Number of criminal charges categorize by type
- M. Number of jail bookings
- N. Number of jail bed days
- O. Number of visits to an emergency room
- P. Number of inpatient admits to hospital care
- Q. Number of contacts with fire/EMS
- R. Number of times team meets with participants-categorized by type: case management, peer counseling, brief outreach
- S. Number of referrals to service-categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, etc.
- T. Number of connections to services-categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, etc.
- U. Percentage of individuals that received a URICA score
- V. Participant survey baseline, at six (6) months and one (1) year

4.5.3. The LEAD program manager will provide logistical coordination, support, and record-keeping to the local LEAD advisory board and operational workgroup. Meetings will be scheduled as frequently as necessary to maintain the integrity and operation of the LEAD program; This support shall include, but not limited to the following:

- 4.5.3.1. Set meeting dates and provide coordination of presenters and subject matter experts for the LEAD advisory board and Steering Board meetings;

- 4.5.3.2. Work with PDA program manager to develop and provide an agenda to LEAD advisory board members for each meeting;
- 4.5.3.3. Provide all meeting agendas, minutes and pertinent documents to the PDA program manager and the HCA Contract Manager
- 4.5.3.4. Meet at least monthly with the PDA program manager to ensure communication and coordination of project;
- 4.5.3.5. Upon request, participate in presentations to key state and local stakeholders on progress;
- 4.5.3.6. Create and/or renew MOUs to facilitate information sharing; and
- 4.5.3.7. Provide a satisfaction survey to participants, officers, and stakeholders within the last quarter of the program.
- 4.5.4. Operational workgroup meetings are for the purposes of coordinating care for LEAD program participants and only those participants that have signed an ROI with operational workgroups members are to be discussed during the workgroup meetings.
- 4.5.5. Coordinate, schedule and conduct operational workgroup meetings, as needed, and is to include the following participants:
  - 4.5.5.1. Law Enforcement Officers referring to the LEAD program
  - 4.5.5.2. Prosecutors considering cases involving LEAD program participants
  - 4.5.5.3. Case Managers assisting LEAD program participants
  - 4.5.5.4. LEAD program project managers
- 4.5.6. The LEAD program manager will participate in technical assistance calls with the PDA program manager, at least once a month, to maintain the integrity and fidelity of the LEAD program.
- 4.5.7. Maintain employees and/or contract clinical support positions, to include the following:
  - 4.5.7.1. Outreach Coordinator;
  - 4.5.7.2. Clinical Supervisor, and
  - 4.5.7.3. Case Manager.

- 4.5.8. Coordinate, schedule, and conduct LEAD steering committee and advisory board meetings as needed to maintain the integrity and fidelity of the LEAD program.
- 4.5.9. Provide referrals to local community agencies for intensive case management services, including but not limited to substance use, mental health, and behavioral health assessment and treatment.
- 4.5.10. Monitor to ensure LEAD program has made at least 350 referrals of new, previously referred or previously discharged participants, admit at least the minimum required to maintain a case load of at least 25 active participants per case manager, with at least 4 case managers, by June 30, 2023.
- 4.5.11. Submit Monthly Reports as detailed in the Deliverable Table with the invoice to the HCA Contract Manager, including but not limited to: how many individuals referred, number of active participants, current barriers, attempts to resolve barriers, any staffing changes, any success stories, and TA needs.
- 4.5.12. Ensure travel per diem, computers, office supplies and all the other supplies and tools necessary to perform defined duties are provided to LEAD program staff and/or contract staff.

## 5. Deliverables Table

#	Deliverable	Due Date	Payment
1	Renew contract with Julota Case Management and Data Collection Software platform.	Within thirty (45) days of the Date of Execution	One-time payment of \$47,695
2	Minutes detailing all local LEAD advisory board and operational workgroup meetings. Up to 63 meetings throughout the duration of this Contract. (averaging 3 meetings per month).	Due the 15 <sup>th</sup> of each month, following the month of service	\$4,000 per meeting, not to exceed \$252,000
3	Monthly Technical Assistance (TA) calls with the PDA Technical Assistance Team.	No less than one (1) call per month.	\$10,000 per month, not to exceed \$210,000
4	Monthly Data Collection Report	Due the 15 <sup>th</sup> of each month, following the month of service	\$15,000 per month, not to exceed \$315,000



#	Deliverable	Due Date	Payment
5	LEAD Monthly Progress Report	Due the 15 <sup>th</sup> of each month, following the month of service	\$10,000 per month, not to exceed \$210,000
6	Successfully refer a minimum of 350 individuals, admit at least the minimum required to maintain an average case load of at least 25 per case manager with a minimum of 4 case managers, each year.	June 30, 2023	One-time payment of \$23,556
7	Indirect (administrative) costs: Only 10% of direct costs.	Monthly, and no later than 60 days following the Contract end date.	10% of direct costs- up to \$117,583
<b>Maximum Consideration for HCA Contract K5735</b>			<b>\$1,175,834</b>

**EXHIBIT "C-1"**  
(COMPENSATION)

**I. Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$371,583 is the Washington State Health Care Authority and the U.S. Department of Justice. The budget for this work is as follows:

Cost Description*	Documents Required with Invoices	Budget
<b>Washington State Health Care Authority (HCA) Funding:</b>		
Personnel – (salary, taxes, benefits): .10 FTE: Clinical Sup/Program Manager 3 FTE: Intensive Case Managers/Outreach	General Ledger Detail	\$102,864
Vehicle car washes	GL Detail and Receipts (write employee's name on receipts)	7,285
Cell phone plans	GL Detail	\$2,880
Office Supplies		\$5,000
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled, federal reimbursement rate (per <a href="http://www.gsa.gov">www.gsa.gov</a> ) and a brief description of the purpose of travel	\$14,742
Travel/Training – Lodging and meal costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates ( <a href="http://www.gsa.gov">www.gsa.gov</a> ), specific to location.	Ground transportation, coach airfare and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, dates of travel, starting point and destination, brief description of the purpose. Receipts for registration fees or other documentation of professional training expenses. Receipts for meals are not required.	\$5,714
Client Direct Services Support	Flex Fund Spreadsheet and copies of receipts	\$57,142
<b>HCA Direct Costs Subtotal</b>		<b>\$195,627</b>
<b>HCA Indirect** @ 10%</b>		<b>\$19,563</b>
<b>Department of Justice (DOJ) Funding:</b>		
Personnel – (salary, taxes, benefits): 1 FTE: LEAD Supervisor .40 FTE: Clinical Sup/Program Manager 2 FTE: Intensive Case Managers/Outreach	General Ledger Detail	\$140,894
<b>DOJ Direct Costs Subtotal</b>		<b>\$140,894</b>
<b>DOJ Indirect** @ 11%</b>		<b>\$15,499</b>
<b>TOTAL BUDGET</b>		<b>\$371,583</b>

\*Changes to the HCA funded line-item budget that exceed 10% of the line item must be approved in writing by the County.

\*\* HCA funded indirect will not exceed 10%; DOJ funded indirect shall not exceed the current federally approved rate.

**Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. The Contractor shall submit invoices including required documentation to:

[VMartin@co.whatcom.wa.us](mailto:VMartin@co.whatcom.wa.us)

OR

Louise Trapp, Administrative Manager  
Whatcom County Prosecuting Attorney  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225

2. Monthly invoices must be submitted by the 15<sup>th</sup> of the month following the month of service. Invoices submitted for payment must include the items identified in the table above.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-093

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<b>File ID:</b>	AB2022-093	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<b>Entered by:</b>	MKeeley@co.whatcom.wa.us		
<b>Department:</b>	Human Resources Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

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

Request authorization for the County Executive to enter into a contract between Whatcom County and Gallagher Benefit Services, Inc. to provide a compensation study for unrepresented employees, in an amount not to exceed \$50,000

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

Please refer to staff memo for more information

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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



**MEMO TO:** Satpal Sidhu, County Executive

**THROUGH:** Tyler Schroeder, Deputy Executive

**FROM:** Melissa Keeley, Human Resources Manager

**DATE:** January 28, 2022

**SUBJECT:** Contract for Compensation Study for Unrepresented Employees

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Enclosed are two (2) originals of a Contract for Services between Whatcom County and Gallagher Human Resources and Compensation Consulting.

**Background and Purpose**

The County last completed a formal review of unrepresented compensation in 2016. The labor market has changed significantly in recent years and it is recommended to conduct a study to provide insight on whether compensation has remained competitive in the relevant labor market and if the classification structure is internally equitable.

**Funding Amount and Source**

On November 23, 2021 the Council approved an amount of \$50,000 for this study from the non-departmental general fund budget. The consultant's proposal is \$49,500.

Thank you for your consideration. Please contact me at [mkeeley@co.whatcom.wa](mailto:mkeeley@co.whatcom.wa) or ext. 5305 if you have any questions regarding the terms of this agreement.

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Administrative Services
Division/Program: (i.e. Dept. Division and Program)	Human Resources
Contract or Grant Administrator:	Melissa Keeley
Contractor's / Agency Name:	Gallagher Benefit Services, Inc.
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input checked="" type="radio"/> No <input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/>	
If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFP #21-72 Contract Cost Center: 507140.6630.902	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 49,500 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> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</li> </ol>
Summary of Scope: _____	
The purpose of this study is to evaluate whether the current compensation for County unrepresented positions is competitive with the relevant labor market and to review the classification structure for internal pay equity.	
Term of Contract: February 9, 2022 Expiration Date: May 31, 2022	

Contract Routing:	1. Prepared by: Melissa Keeley	Date: 1/28/22
	2. Attorney signoff: George Roche - approved by email	Date: 1/28/22
	3. AS Finance reviewed: Brad Bennett - approved by email	Date: 1/28/22
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed:	Date:
	6. Submitted to Exec.:	Date:
	7. Council approved (if necessary):	Date:
	8. Executive signed:	Date:
	9. Original to Council:	Date:

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Gallagher Benefit Services, Inc.**

Gallagher Benefit Services, Inc., hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement ("Agreement"), including:

General Conditions, pp.3 to 12,  
Exhibit A (Scope of Work), pp. 13,  
Exhibit B (Compensation), pp. 14,  
Exhibit C (Certificate of Insurance) 15-16.

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 9th day of February, 2022, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of May, 2022.

The general purpose or objective of this Agreement is to conduct a compensation study and provide salary and classification recommendations for unrepresented positions of Whatcom County as more fully and definitely 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 \$50,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

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

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this 8 day of February, 2022.

**CONTRACTOR:**

Gallagher Benefit Services, Inc.



Mike Verdoorn, Managing Principal

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:**

DocuSigned by: 1/31/2022  
Melissa Keely  
Human Resources Manager Date

**Approved as to form:**

DocuSigned by: 1/31/2022  
George Roche  
Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

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

**CONTRACTOR INFORMATION:**

Gallagher Benefit Services, Inc.

Address:  
901 Marquette Ave. S. Suite 1900  
Minneapolis, MN 55406

Mailing Address:  
same

**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 six months at a time, and for a total of no longer than one year.

**11.1 Termination for Default:**

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

**11.2 Termination for Reduction in Funding:**

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

**11.3 Termination for Public Convenience:**

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Termination under this provision shall be effective 30 days following Contractor's receipt of written notice, or within 33 days of the mailing notice, whichever occurs first. 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. Notwithstanding the foregoing, Contractor will retain sole and exclusive ownership of all right, title and interest in and to its intellectual property and derivatives thereof which no data or confidential information of the County was used to create and which was developed entirely using Contractor's own resources. To the extent Contractor's intellectual property is necessary for the County to use the services provided, Contractor will grant to the County a non-exclusive, royalty-free license to Contractor's intellectual property solely for the County's use of such services.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided

to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

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

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

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

### 31.2 Patent/Copyright Infringement:

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

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

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

### 32.1 Confidentiality:

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

### 33.1 Right to Review:

This Agreement 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 Agreement or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Agreement, whichever are greater.

#### 1. **Commercial General Liability**

Property Damage

\$500,000.00, per occurrence

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

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

## **2. Professional Liability**

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

- a. 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. Claims-made form coverage shall be maintained by the Contractor for a minimum of 24 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

## **4. Additional Insurance Requirements and Provisions**

- a. All insurance policies, with the exception of Professional Liability, shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' Commercial General Liability insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's Commercial General Liability insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non- contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract, with the exception of Professional Liability. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom

County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

- g. Any cancelled or non-renewed policy will be replaced with no coverage gap and a current Certificate of Insurance will be provided to the County. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

**34.3 Defense, Indemnity and Limitation of Liability Agreement.** To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County

and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, negligent act or omission, negligent or otherwise, of the Contractor,

its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly



arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

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

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

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

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

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

Contractor's liability to the County and any other party for any losses, injury or damages to persons or properties or work performed arising out of in connection with this Agreement and for any other claim, whether the claim arises in contract, tort, statute or otherwise, shall be limited to the amount of the total fees due to Contractor from County for the particular Scope of Work giving rise to the claim.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CONTRACTOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, LOST PROFITS, OR PUNITIVE DAMAGES SUSTAINED OR INCURRED IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

#### 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:

Melissa Keeley, HR Manager  
Administrative Services Department  
311 Grand Avenue, Suite 107  
Bellingham, WA 98225  
360-778-5305  
mkeeley@co.whatcom.wa.us

37.2 Notice:

Any notices or communications required or permitted to be given by this Agreement 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:

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 Agreement 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:

Not applicable.

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38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:  
Not applicable.

38.3 E-Verify:  
Not applicable.

***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:  
Not applicable.

43.1 Venue and Choice of Law:

Contract for Services  
Gallagher Benefit Services, Inc.

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)

The purpose of this study is to evaluate whether the current compensation of the County's unrepresented positions are competitive with the relevant labor market and to review the classification structure for internal pay equity. This study includes approximately 106 unrepresented County positions held by approximately 140 employees. The study will begin on or about February 9, 2022 and end with a final report on May 31, 2022. The scope of work includes:

**Project Management and Strategy Development**

- Initial strategy meeting with key Human Resources staff via video call to confirm objectives, develop project plans, establish finite time frames and logistics
- Review or development of compensation philosophy including organization and salary material
- Review of strengths/weaknesses of current system

**Job Evaluation Study**

- Analysis of existing classifications and recommendations on any changes to current classification plan
- Recommendation of standard classification and titling conventions
- Review of and analysis of job descriptions for all employees covered by the study
- Introduction and training to job evaluation methods, including the Decision Band Method
- Evaluation of the County's pay plan for unrepresented positions

**Compensation Study**

- Conduct meeting with HR/leadership/project team at critical intervals to discuss deliverables
- Labor market confirmed and survey participants identified to gather data from local, state and regional sources
- Benchmark jobs identified and summarized
- Identification of hard to recruit positions and assessment of the relevance of compensation for recruiting
- Custom survey developed and conducted to document the following for each benchmarked position:
  - Low, middle, and high range
  - Paid time off benefits
  - Longevity pay
  - Premium pay
  - Merit pay
  - Retirement matching policies
  - Remote work policies
- Comprehensive internal salary relationship analysis of data to ensure the structure is internally equitable and externally competitive
- Competitive analysis of market data performed
- Diagnostic review of current salary structures to identify opportunities for simplification and reduction in pay compression
- Recommended pay structure developed or existing structures updated (includes one revision if requested)
- Internal review and feedback provided by the County including other recommendations and approval of implementation options.
- Provide the County with up to three (3) transition options, recommendations and next steps/ongoing maintenance.

**Project Finalization**

- Provide a Final Report to include the results of the compensation and benefit study, the methodology used, major findings, and recommendations for simplification and ongoing maintenance of internal equity and external competitiveness. The Final Report will be at level of detail appropriate for a transparent public organization.
- Finalization of the County's compensation philosophy and supporting strategies alongside compensation study results
- Training for staff including necessary tools to maintain system
- Necessary virtual meetings including presentation
- Provide up to 20 hours additional consultation time following completion of the project if needed through the end of 2022 within reason and with advance notice at a fixed hourly rate of pay.

**EXHIBIT "B"**  
(COMPENSATION)

Fees and expenses include out of pocket expenses and will not exceed \$50,000. All expenses are included below. Study costs are directly derived from estimating the number of hours needed to perform the work and the level of the consultant charged with performing the work.

PHASE	COST
<b>Project Management and Strategy Development</b>	\$4,500
<b>Job Evaluation Study</b> - Review of current evaluation or identified classifications, and training for HR.	\$10,000 (*does not include the writing / updating of job descriptions)
<b>Compensation Study</b>	\$25,000
<b>Project Finalization</b>	\$10,000

**TOTAL FEES: \$49,500**

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



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

1/31/2022

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> Arthur J. Gallagher Risk Management Services, Inc. 300 S. Riverside Plaza, Suite 1500 Chicago IL 60606		<b>CONTACT NAME:</b> Direct All Inquiries to Email <b>PHONE:</b> (A/C No. Ext): <b>FAX:</b> (A/C No.): <b>E-MAIL ADDRESS:</b> Chi_Certificates@aig.com	
<b>INSURED</b> Gallagher Benefit Services, Inc. 901 Marquette Avenue 19th Floor/Suite 1900 Minneapolis, MN 55402		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Arch Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 11150	

**COVERAGES** **CERTIFICATE NUMBER:** 1880883185 **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 INSR INSD WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		41GPP4938414	10/1/2021	10/1/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRE AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		41CAB4938314 (AOS)	10/1/2021	10/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	41WCI4938114 (AOS)	10/1/2021	10/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**

Whatcom County  
 Attn: Melissa Keeley  
 311 Grand Ave.  
 Bellingham WA 98225

**CANCELLATION**

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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ACORD 25 (2016/03)

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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: AB2022-084

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<b>File ID:</b>	AB2022-084	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/27/2022	<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>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Discussion of an ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations) and 22 (Land Use and Development)

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Planning and Development Services annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This year's 8 proposed code amendments include such items and one proposed policy change.

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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

## Miscellaneous Code Amendments 2021

### I. Background Information

**File #** PLN2019-00006

**File Name:** Miscellaneous Code Amendments 2021

**Applicants:** Whatcom County Planning and Development Services (PDS)

**Summary of Request:** Proposed amendments to WCC Titles 20 (Zoning) and 22 (Land Use and Development). This is an annual “code scrub,” wherein staff proposes amendments to clarify code, fix inconsistencies and grammar, and modify certain policies to a small degree.

**Location:** Countywide.

**Background:** Planning and Development Services annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This year’s 8 proposed code amendments include such items as well as one proposed policy change (found in proposed amendment 3 addressing the process for exceeding forestland retention limits in the Rural Forestry district).

### II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein.

### III. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan’s Goal 2D to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”

### IV. Proposed Findings of Fact and Reasons for Action

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. The Council’s 2021 docket includes item PLN2021-00006, “Review and revise the Whatcom County Zoning Code and other sections of the County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Revisions needed to achieve consistency with the Growth Management Act may also be considered.”
2. Whatcom County Planning and Development Services submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 17, 2021.

4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on December 10, 2021, for their 60-day review. No comments were received.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on January 13, 2021.
6. The County Council held a duly noticed public hearing on the proposed amendments on \_\_\_\_\_, 2022.
7. The amendments are consistent with Comprehensive Plan Policy Goal 2D to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
8. In reference to Exhibit A, Amendment No. 1: The proposed amendments to WCC 20.04.035 only cleans up outdated references to certain County departments and divisions.
9. In reference to Exhibit A, Amendment No. 2: The proposed amendments to WCC 20.38.060 only fix grammar.
10. In reference to Exhibit A, Amendment No. 3: Unlike in other districts the existing lot coverage section of the Rural Forestry district contains both lot coverage rules *and* forestland retention rules. The proposed amendments to WCC 20.42.450 and addition of 20.42.455 would split these concepts into separate sections. Additionally, the current forestland protection regulation allows the 20% limit to be exceeded through a Conditional Use Permit (CUP) (or Planned Unit Development (PUD)), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsidizes more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views, contrary to the intent of this district. Changing the process for exceeding the 20% clearing limit would require that such applicants, if not doing a PUD, show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria. The remaining members of Council’s Forestry Advisory Committee were consulted and have endorsed these amendments.
11. In reference to Exhibit A, Amendment No. 4: The amendments to WCC 20.22.662, 20.24.652, 20.32.652, 20.34.652, 20.36.652, 20.37.651, 20.40.662, 20.42.652, and 20.43.662 would make the mineral lands disclosure requirement of 500 (rather than 300) feet consistent with WCC 14.06.030(B) (Mineral Resource Land – Disclosure), a change Council made in 2003 (ORD2003-061). Though Council updated that section, the revised distance was not carried through to the language in the individual districts, creating an inconsistency. These amendments would rectify that.
12. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.36.156, 20.40.165, 20.42.157, 20.51.101, 20.59.201, 20.61.051, 20.62.155, 20.66.082, 20.71.221, 20.72.154, and 20.72.204, and the addition of 20.97.004 would standardize the language used for kennels and accessory kennels, as suggested by the Whatcom County Hearing Examiner.
13. In reference to Exhibit A, Amendment No. 6: In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, and adopted new definitions. However, the previous (then existing) definitions were not deleted. Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they’re listed as both in 5 of those zones. The amendments would delete family day care homes as permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM,

UR-MX, RR-I, R, TZ, AG, NC, and RGC districts. The deletion of WCC 20.20.059, 20.22.057, 20.24.057, 20.37.056, 20.40.057, and 20.97.052.1 would clean up these inconsistencies.

14. In reference to Exhibit A, Amendment No. 7: The amendments to WCC 20.40.254 clarify which general standards apply only to agricultural short plats vs. agricultural boundary line adjustments.
15. In reference to Exhibit A, Amendment No. 8: The amendment to WCC 22.05.100(3) clarifies the timeline for applicants to respond to a Notice of Additional Requirements.

## **V. Proposed Conclusions**

1. The amendments to the development regulations are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VI. Recommendations**

On January 13, 2022, the Planning Commission voted 6 to 0 (3 members absent) to recommend to Council approval of the proposed code amendments. Planning and Development Services staff concurs with their recommendation as the amendments are necessary to add clarity to development regulations and procedures, to keep the code up to date, and to fix some inconsistencies.

## **Attachments**

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments

PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (ZONING), 21 (LAND DIVISION REGULATIONS) AND 22 (LAND USE AND DEVELOPMENT)**

**WHEREAS,** The Council's 2021 docket includes item PLN2021-00006, "Review and revise the Whatcom County Zoning Code and other sections of the County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Revisions needed to achieve consistency with the Growth Management Act may also be considered."

**WHEREAS,** Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 20 and 22 to fulfill this directive; 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. Whatcom County Planning and Development Services submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 17, 2021.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on December 10, 2021, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on January 13, 2021.
5. The County Council held a duly noticed public hearing on the proposed amendments on \_\_\_\_\_, 2022.
6. The amendments are consistent with Comprehensive Plan Policy Goal 2D to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."
7. In reference to Exhibit A, Amendment No. 1: The proposed amendments to WCC 20.04.035 only cleans up outdated references to certain County departments and divisions.
8. In reference to Exhibit A, Amendment No. 2: The proposed amendments to WCC 20.38.060 only fix grammar.
9. In reference to Exhibit A, Amendment No. 3: Unlike in other districts the existing lot coverage section of the Rural Forestry district contains both lot coverage rules *and* forestland retention rules. The proposed amendments to WCC 20.42.450 and addition of 20.42.455 would split these concepts into separate sections. Additionally, the current forestland protection regulation allows the 20% limit to be exceeded through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more

forest so as to obtain hilltop views, contrary to the intent of this district. Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria. The remaining members of Council's Forestry Advisory Committee were consulted and have endorsed these amendments.

10. In reference to Exhibit A, Amendment No. 4: The amendments to WCC 20.22.662, 20.24.652, 20.32.652, 20.34.652, 20.36.652, 20.37.651, 20.40.662, 20.42.652, and 20.43.662 would make the mineral lands disclosure requirement of 500 (rather than 300) feet consistent with WCC 14.06.030(B) (Mineral Resource Land – Disclosure), a change Council made in 2003 (ORD2003-061). Though Council updated that section, the revised distance was not carried through to the language in the individual districts, creating an inconsistency. These amendments would rectify that.
11. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.36.156, 20.40.165, 20.42.157, 20.51.101, 20.59.201, 20.61.051, 20.62.155, 20.66.082, 20.71.221, 20.72.154, and 20.72.204, and the addition of 20.97.004 would standardize the language used for kennels and accessory kennels, as suggested by the Whatcom County Hearing Examiner.
12. In reference to Exhibit A, Amendment No. 6: In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, and adopted new definitions. However, the previous (then existing) definitions were not deleted. Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they're listed as both in 5 of those zones. The amendments would delete family day care homes as a permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts. The deletion of WCC 20.20.059, 20.22.057, 20.24.057, 20.37.056, 20.40.057, and 20.97.052.1 would clean up these inconsistencies.
13. In reference to Exhibit A, Amendment No. 7: The amendments to WCC 20.40.254 clarify which general standards apply only to agricultural short plats vs. agricultural boundary line adjustments.
14. In reference to Exhibit A, Amendment No. 8: The amendment to WCC 22.05.100(3) clarifies the timeline for applicants to respond to a Notice of Additional Requirements.

## **CONCLUSIONS**

1. The amendments to the development regulations are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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 Miscellaneous Code Amendments 2021

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## WCC TITLE 20 (ZONING)

### 1) Clean-up of Department & Division Names

This is just clean-up of department and division names.

### Chapter 20.04 General Provisions

#### 20.04.035 Administrative responsibilities.

~~The land use division of the~~ Department of Planning and Development Services department is responsible for the administration of this ~~title. The division, and~~ shall act as a coordinating agent to ensure that the regulatory process is expeditious. In so doing, the Department and shall recognize input provided by other departments and divisions having appropriate expertise, including: ~~the Public Works' division of the~~ Engineering Services division for ~~solid waste,~~ road, drainage, and land alteration; the ~~Fire Marshal~~ for fire-related issues; the Whatcom County ~~Health Department~~ for domestic water, waste disposal, solid waste, and noise; and the Department's Planning Division for land use and general site design. All County departments and divisions of county government shall cooperate fully ~~with the land use division~~ in the exercise of their duties relative to land use controls and regulations.

### 2) Habitable v. Inhabitable

This is just a grammatical change. Though “habitable” and “inhabitable” mean the same thing, “habitable” is used more commonly in the code and permitting staff are more used to it. Therefore staff would like to exchange the terms in the below section.

### Chapter 20.38 Agriculture Protection Overlay

#### 20.38.060 Development and use standards.

Subdivisions or segregations for nonagricultural uses shall be clustered. Development on all parcels subject to this section shall follow the requirements below:

...

- (7) Any ~~in~~habitable structure within the cluster subdivision shall be set back a minimum of 100 feet, and any accessory or other non-~~in~~habitable structures shall be set back at least 30 feet, from the property line of any parcel that is an APO reserve tract or designated or taxed for agricultural purposes; and

...

**3) Rural Forestry Lot Coverage (1 POLICY CHANGE)**

The purpose of the Rural Forestry district is:

The primary purpose of this district is to implement the forestry designation of the Whatcom County Comprehensive Plan, established pursuant to RCW 36.70A.170, by providing the opportunity for non-industrial landowners to **manage their land for long-term productivity and sustained use of forest resources**. In addition, the district encourages the **management of land for wildlife, aesthetics, and other non-commodity values**. It also provides for uses that are compatible with these activities, while maintaining water quality and soil productivity. Lummi Island Scenic Estates shall be administered under the RR-I zone district regulations. A secondary purpose of this district is **to serve as a holding district within the urban growth area** Comprehensive Plan designations **to allow forestry uses** in the near term **while protecting the area from suburban sprawl and preserving the potential for future urban development**. [WCC 2042.010, emphasis added]

When calculating lot coverage only areas of roofed structures are included (as shown in the following definition) in all zones except the Rural Forestry district.

**20.97.217 Lot coverage.**

“Lot coverage” means the percent of a lot or parcel which is, or will be, covered by all structures located thereon. Coverage is determined by measuring areas covered by a weather tight roof. For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used to compute lot coverage.

In Rural Forestry, §20.42.450 indicates that we’re to include in the calculation everything that is not in forest product production. This would include roads and other open areas not containing roofed structures; basically anything (but critical areas) not containing forest. Unfortunately the language of §20.42.450 addresses two issues: primarily maintaining forest land but a little about lot coverage.

Staff proposes to break this section into two: One actually addressing lot coverage as it’s addressed in other districts (i.e., how much land can be covered in structures), and the other addressing forest land protection (which is what the existing language is primarily about). The proposed lot coverage language is taken from that of the Rural district. The proposed forestland retention language (§20.42.455) comes from the existing “lot coverage” language. This part of the amendment is not a policy change.

However, one policy amendment staff is proposing is to require a variance, rather than a conditional use permit. The current forestland protection regulation allows the 20% limit to be exceeded (up to 35%) through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views. This is contrary to the intent of this district, which is for “for nonindustrial landowners to manage their land for long-term productivity and sustained use of forest resources” (§20.42.010). Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria.

Additionally, staff recommends that we get rid of WCC 20.40.900, which contains CUP criteria specific to this zone. The criteria for other CUPs are found in WCC 22.05.026 and are almost identical, with the exception of a few that are already covered by other sections of the code (e.g., stormwater, critical areas, etc.). We find it odd to have different CUP criteria for different zones and believe this is a holdover from days past.

## Chapter 20.42 Rural Forestry (RF) District

### 20.42.450 Lot coverage.

~~No more than 20 percent of the lot area shall be permanently altered or removed from production of forest products, excluding natural meadows, bogs, surface water and rock outcrops, unless authorized as a conditional use or the planned unit development provision of Chapter 20.85 WCC, in which case no structure or combination of structures, including accessory buildings, shall occupy or cover more than 35 percent of the lot. No structure or combination of structures, except for forest production structures, shall occupy or cover more than 5,000 square feet or 20%, whichever is greater, of the total lot area, not to exceed 25,000 square feet.~~

### 20.42.455 Forestland Retention.

~~No more than 20% of a lot's area shall be permanently altered or removed from the production of forest products, unless authorized by a variance (WCC 22.05.024) or as a Planned Unit Development (WCC Chapter 20.85), in which case no more than 35% of the lot's area shall be permanently altered or removed from the production of forest products.~~

### 20.42.150 Conditional uses.

The conditional uses listed herein shall be administered pursuant to the applicable provisions of Chapters ~~20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), 16.08 the Whatcom County (SEPA) Ordinance, and Titles 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance and 23 (the Whatcom County Shoreline Management Program).~~ Applicable conditional use permit criteria are established in the provisions of WCC 20.42.900 and will not be subject to the conditional use criteria provided for in WCC 22.05.026.

...

Editor's Note: The list of conditional uses is not being shown as they are not proposed for amendment.

### ~~20.42.900 Conditional use permit criteria.~~

~~.901 The conditional uses listed in WCC 20.42.150 shall be subject to the following forestry conditional use criteria. Said criteria listed in WCC 20.42.902 shall supersede the criteria listed in WCC 22.05.026.~~

~~.902 Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled and shall find adequate evidence showing that the proposed conditional use at the proposed location will:~~

- ~~(1) Be in accordance with all applicable local and state laws, standards and regulations;~~
- ~~(2) Be reasonably compatible with the surrounding environment and with the policies of the Whatcom County Comprehensive Plan;~~
- ~~(3) Not generate traffic in excess of capacity of the public road system at reasonable safety and service levels;~~
- ~~(4) Not create unreasonable demands for public expenditures to provide services, facilities, or utilities beyond those which are normally required for permitted uses in the Forestry District;~~
- ~~(5) Provide entrances to public roads or private roads open to public use in accordance with applicable county or state standards;~~

- ~~(6) Provide reasonable sound and sight buffering so as not to detract from normal use of surrounding property, public and private roads, and trails open to public use;~~
- ~~(7) Be located a reasonable distance from areas of actual or potential natural hazard;~~
- ~~(8) Not unreasonably contribute to actual or potential water quality or quantity problems;~~
- ~~(9) Be designed to provide reasonable safety from fire hazard;~~
- ~~(10) Not unreasonably interfere with any territorial or otherwise significant view from surrounding property and public roads;~~
- ~~(11) Not remove areas of native vegetation which protect shorelines and streambanks from erosion, except as necessary for such uses as culverts, bridges, boat ramps, recreation areas and stream bank stabilization projects; and~~
- ~~(12) Include reasonable soil erosion plans necessary to prevent soil, organic debris and other pollutants from entering streams, ponds, or lakes.~~

#### 4) Mineral Lands Notification Distance

In 2003, Council amended WCC 14.06.030(B) (Mineral Resource Land – Disclosure) to required that—upon conveyance of a fee interest in real property or upon the issuance of a discretionary development permit—property owners sign a disclosure acknowledging that the property is within 500 feet of Mineral Resource Lands (it had previously been 300 feet). The purpose of this requirement was “to promote a good neighbor policy between mineral and non-mineral property owners by requiring notification to purchasers and users of property adjacent to or near mine operations of the inherent potential problems associated with such purchase or use.” (WCC 14.06.010(B))

There are similar requirements in various zones; however, they all require disclosure if within 300 feet of an MRL. It appears that the change in distance was not updated everywhere (nor mentioned in the ordinance (ORD2003-061). Staff would like to rectify this inconsistency, and since ORD2003-061 was the most recent amendment to this policy we proposed to change the distance to 500 feet in each of the Title 20 sections in which this inconsistency is found.

### Chapter 20.22 Urban Residential – Medium Density (URM) District

#### 20.22.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

### Chapter 20.24 Urban Residential Mixed (UR-MX) District

#### 20.24.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.32 Residential Rural (RR) District**

### **20.32.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.34, Rural Residential-Island (RR-I) District**

### **20.34.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.36 Rural (R) District**

### **20.36.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.37 Point Roberts Transitional Zone (TZ) District**

### **20.37.651 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of an area designated as Rural or within ~~3500~~ feet of an area upon which farm operations are being conducted shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.40 Agriculture (AG) District**

### **20.40.662 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## Chapter 20.42 Rural Forestry (RF) District

### 20.42.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## Chapter 20.43 Commercial Forestry (CF) District

### 20.43.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

### 5) Standardizing Kennel Language

In 2021 the Hearing Examiner issued a decision on an appeal of a PDS Code Interpretation (APL2020-0004) in which he raised a code construction problem: That throughout the code we use (and in the past have used) “kennel” in different ways and with different “intent” language. The following table indicates where the term “kennel” appears and its various iterations:

Zone	Permitted	Conditional Use	Prohibited	Term Used
Rural		20.36.155		Animal hospitals and <b>accessory kennels</b> and stables (subject to 3 standards)
		20.36.156		<b>Commercial kennels</b> and stables intended for the boarding or training of domestic animals
Agriculture		20.40.165		<b>Commercial kennels</b> (subject to numerous standards)
Rural Forestry		20.42.157		The operation of fur farms and <b>kennels</b>
Lake Whatcom Overlay District			20.51.100	Animal hospitals and <b>accessory kennels</b> and stables
			20.51.101	<b>Commercial kennels</b> and stables
Rural General Commercial		20.59.201		<b>Animal kennels</b>
Small Town Commercial	20.61.051(3)			Veterinary practices with <b>accessory indoor kennels</b>
		20.61.201(4)		<b>Animal kennels</b> not associated with a veterinary practice
General Commercial		20.62.155		<b>Animal kennels</b>

Rural Industrial and Manufacturing	20.69.053(5)			Animal hospital and <b>accessory kennels</b> and stables
Water Resources Protection Overlay District			20.71.220	Animal hospitals and <b>accessory kennels</b> and stables
			20.71.221	<b>Commercial kennels</b> and stables
Point Roberts Special District		20.72.154(2)		In the STC, <b>animal kennels</b> for kenneling up to six animals and that are associated with an animal groomer
			20.72.204(2)	In the STC, <b>animal kennels</b> , except as allowed by 20.72.154(2)

Because of the Hearing Examiner's suggestion, staff would like to remedy this by standardizing the language and by adding a new definition of "accessory kennel." Note that we are not proposing to amend the definition of "kennel," nor the conditions they're allowed in some of the zones.

For reference, the definition of "kennel" is:

**20.97.191 Kennel.**

"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses.

Additionally, staff recommends that kennels be allowed in the Light Impact Industrial district and proposes to add them to the permitted use section of Chapter 20.66.

### Chapter 20.97 Definitions

**20.97.004 Accessory kennels and accessory stables**

"Accessory kennel" or "accessory stable" means the indoor facilities necessary for an animal hospital or veterinarian to house overnight animals undergoing medical care or treatment.

### Chapter 20.36 Rural (R) District

**20.36.150 Conditional uses.**

...

**.156 ~~Commercial k~~ Kennels and stables.**

...

### Chapter 20.40 Agriculture (AG) District

**20.40.150 Conditional uses.**

...

**.165 ~~Commercial k~~ Kennels**, ~~as identified in WCC 20.97.191~~, which shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area, provided the following criteria are met:

...



## Chapter 20.42 Rural Forestry (RF) District

### 20.42.150 Conditional uses.

...

.157 ~~The operation of f~~ur farms and kennels.

...

## Chapter 20.51 Lake Whatcom Watershed Overlay District

### 20.51.080 Prohibited uses.

...

.101 ~~Commercial k~~ennels and stables.

...

## Chapter 20.59 Rural General Commercial (RGC) District

### 20.59.200 Conditional uses.

...

.201 Retail and office type uses.

(1) ~~Animal k~~ennels.

...

## Chapter 20.61 Small Town Commercial (STC) District

### 20.61.050 Permitted uses.

...

.051 Retail and office type uses.

...

(3) Veterinary practices ~~with and~~ accessory ~~indoor~~ kennels.

...

## Chapter 20.62 General Commercial (GC) District

### 20.62.150 Conditional uses.

...

.155 ~~Animal k~~ennels.

...

## Chapter 20.66 Light Impact Industrial (LII) District

### 20.66.050 Permitted uses.

...

.082 Kennels

...

## Chapter 20.71 Water Resource Protection Overlay District

### 20.71.200 Prohibited uses.

...

.221 ~~Commercial k~~ kennels and stables.

...

## Chapter 20.72 Point Roberts Special District

### 20.72.150 Conditional uses.

...

.154 In the Small Town Commercial District:

...

(2) Animal groomers and accessory kennels for ~~kenneling~~ up to six animals ~~and that are associated with an animal groomer.~~

### 20.72.200 Prohibited uses.

...

.204 The following uses are prohibited in the Small Town Commercial Zone District:

(2) ~~Animal k~~ kennels, except as allowed pursuant to WCC 20.72.154(2).

## 6) Childcare Facilities Definitions.

In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, adopting the following definitions:

### 20.97.092 Day care center.

“Day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day to 13 or more children.

### 20.97.126 Family day care home.

“Family day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for six or fewer children in the family abode of the person or persons under whose direct care the children are placed. Such care in a family day care home is limited to six or fewer children, including those children living in the home or children of other close relatives cared for in the home.

### 20.97.241 Mini-day care center.

“Mini-day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day for 12 or fewer children. Such care in a mini-day care center is limited to 12 or fewer children, including those children of the faculty or children of other close relatives cared for by the faculty.

### 20.97.242 Mini-day care home.

“Mini-day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for seven to 12 children in the family abode of the person or persons under whose direct care the children are placed. Such care in a mini-day care home is limited to 12 or fewer children, including those children living in the home or children of other close relatives cared for in the home.

However, the previous (then existing) definitions were not deleted by Ord. 2009-034. As clean up, staff proposes to do that now so that our code doesn't contain conflicting definitions.

Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they're listed as both in 5 of those zones. Thus, staff proposes to delete family day care homes as a permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts.

## **Chapter 20.20 Urban Residential (UR) District**

### **20.20.050 Permitted uses.**

...

~~.059 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.22 Urban Residential – Medium Density (URM) District**

### **20.22.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.24 Urban Residential Mixed (UR-MX) District**

### **20.24.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.37 Point Roberts Transitional Zone (TZ) District**

### **20.37.050 Permitted uses.**

...

~~.056 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.40 Agriculture (AG) District**

### **20.40.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## Chapter 20.97 Definitions

### ~~20.97.052.1 Child care facilities.~~

~~“Child care facilities” means a family day care home, mini day care center, and day care center as defined below:~~

- ~~(1) “Family day care home” means a person regularly providing care during part of the 24-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed.~~
- ~~(2) “Mini day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons.~~
- ~~(3) “Day care center” means a person or agency that provides care for 13 or more children during part of the 24-hour day. (Ord. 99-068, 1999).~~

## 7) Agricultural Boundary Line Adjustments

The language of WCC 20.40.254 contains the general criteria that apply to the separation of farmstead parcels through both agricultural short plats and boundary line adjustments. However, some of the language is confusing as it mixes requirements for the two even though certain ones only apply to one or the other. In particular, the sections addressing “remainder parcels” only apply to short plats, not BLAs. Staff proposes to alleviate this confusion by clarifying which criteria only apply to short plats, and which apply to BLAs. No policy amendments are proposed, only grammatical ones.

### 20.40.250 Division or modification of parcels.

#### .254 Separation of the Farmstead Parcel Criteria.

- (1) The criteria for approval for the farmstead parcel and remainder parcel created through agricultural boundary line adjustment or agricultural short subdivision shall be the following:
  - (a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and
  - (b) The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and
  - (c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and
  - (d) For agricultural short plats:
    - (i) A remainder parcel shall be created equal to or greater than 10 nominal acres; and
    - (ii) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) ~~or (5)~~ shall be included on the short plat ~~or boundary line adjustment~~ for the remainder parcel prior to final approval; and
    - (iii) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the

remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(e) For boundary line adjustments the language as provided in WCC 20.40.250(5) shall be included on the boundary line adjustment prior to final approval;

~~(d)~~(f) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

~~(e)~~(g) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

~~(f)~~(h) The overall submittal shall comply with WCC 20.40.250 et seq.

### 8) Time Period for Responding to NOARs

Under state law, all jurisdictions (including Whatcom County) are required to act on permits within 120 days. However, this clock is stopped at certain points in the review process, one of which is when the County requests additional information when an application doesn't contain enough to ensure consistency with our codes (done through a Notice of Additional Requirements, or NOAR). To keep this schedule, and keep projects from inaction, §22.05.100(3) sets a 180-day time limit for applicants to provide this information. But it also provides an opportunity for applicants to request addition time (up to 2 years). However, staff has found that the language allowing the applicant to request additional time is unclear and would like to adjust it, as shown below.

## Title 22 LAND USE AND DEVELOPMENT

### Chapter 22.05 Project Permit Procedures

#### 22.05.100 Consistency review and recommendations.

During project permit review, the review authority shall determine if the project proposal is consistent with the county's comprehensive plan, other adopted plans, existing regulations and development standards.

...

- (3) For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The notice of additional requirements shall allow the applicant 180 calendar days from the date of issuance to submit all required information. The ~~d~~Director ~~or designee~~ may extend this period for no more than cumulative 24 months upon written request by the applicant, provided the first request is submitted before the end of the first 180-day period. Additional extension requests may be considered if submitted before the end of any subsequent extension period. A notice of additional requirements is not a final administrative determination.

...



# 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>	Held In Committee
<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>	02/08/2022	<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:
10/26/2021	Council Planning and Development Committee	DISCUSSED AND MOTION(S) APPROVED	
11/09/2021	Council Planning and Development Committee	DISCUSSED AND MOTION(S) APPROVED	
12/07/2021	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee
01/25/2022	Council Planning and Development Committee	DISCUSSED AND MOTION(S) APPROVED	
01/25/2022	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee

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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.

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<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:

**Goal 3C:** Create opportunity for a broad range of housing types and encourage mixed affordability.

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.

**Goal 3E:** Provide for future housing needs by responding to changing household demographics.

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.

**Goal 3F:** Provide incentives to create affordable housing.

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.

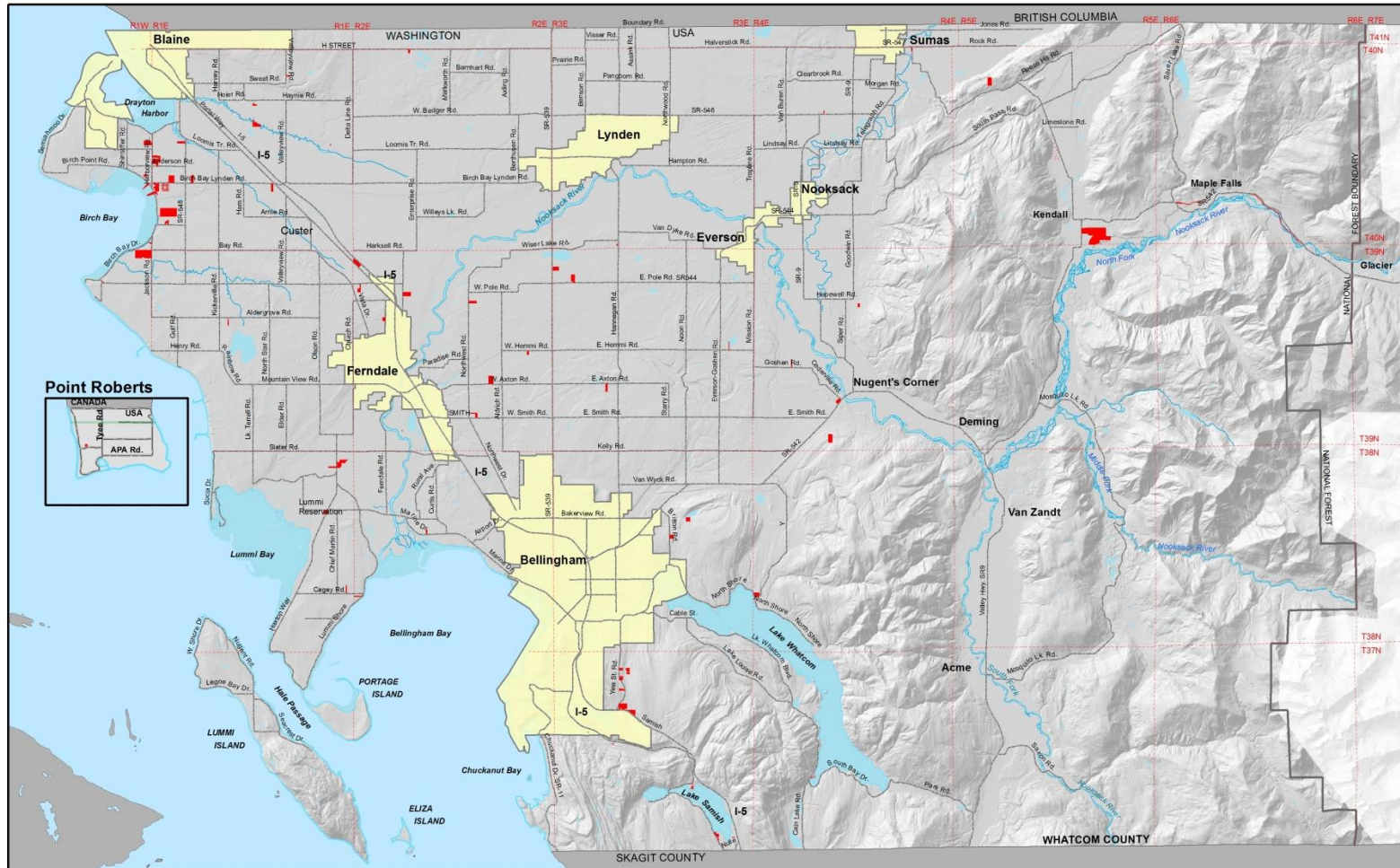
Zoning District	Tiny Home Type			
	Site-Built Tiny Homes	Manufactured Tiny Homes	Type 1 Tiny Homes on Wheels	Type 2 Tiny Homes on Wheels
Small Town Commercial (STC)	<ul style="list-style-type: none"> <li>Primary residence (P)</li> <li>Accessory Dwelling Unit (ADM)</li> </ul>	<ul style="list-style-type: 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.
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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: AB2022-085

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<b>File ID:</b>	AB2022-085	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/27/2022	<b>Entered by:</b>	CHalka@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Public Works & Health Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Discussion regarding COVID-19 Pandemic Response Review project work plan

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding COVID-19 Pandemic Response Review project work plan

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

---

Attachments:



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-048

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<b>File ID:</b>	AB2022-048	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	01/11/2022	<b>Entered by:</b>	MRouse@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Criminal Justice and Public Safety Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance authorizing Superior Court to appoint a statutory commissioner

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This ordinance will amend Whatcom County Code 2.15 to create a statutory court commissioner position in Whatcom County Superior Court.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED	Council Criminal Justice and Public Safety Committee

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**Attachments:** Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AUTHORIZING SUPERIOR COURT TO APPOINT  
A STATUTORY COMMISSIONER**

**WHEREAS**, the Whatcom County Superior Court is limited by the Washington State Constitution to three full-time constitutional commissioners; and,

**WHEREAS**, RCW 26.12.050 allows the superior court to appoint, in addition to the constitutional commissioners, one or more family court commissioners to perform the duties in RCW 26.12.060; and,

**WHEREAS**, RCW 71.05.135 allows the superior court to appoint, in addition to the constitutional commissioners, one or more mental health commissioners to perform the duties in RCW 71.05.137; and,

**WHEREAS**, RCW 10.14.045 allows the superior court to appoint, in addition to the constitutional commissioners, one or more protection order commissioners to exercise all powers and perform all duties of a court commissioner appointed pursuant to RCW 2.24.010; and,

**WHEREAS**, state law specifically allows for one person to be appointed to all three of the above-referenced statutory court commissioner positions; and,

**WHEREAS**, the Whatcom County Superior Court judges want to create one full-time statutory court commissioner position and appoint the same person as the family court commissioner, the mental health commissioner, and the protection order commissioner; and,

**WHEREAS**, state law requires that the creation of statutory court commissioner positions must have the consent of the county legislative authority; and,

**WHEREAS**, the Whatcom County Superior Court judges are requesting the approval of one new statutory court commissioner position as described above as it is necessary for the efficient operation of the court.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

1. The creation of a statutory court commissioner position in Whatcom County Superior Court is approved.
2. Chapter 2.15 Whatcom County Code (WCC) (Family Court Commissioner) shall be amended as shown in the attached Exhibit A.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
(Current Chair's Name), Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Civil Deputy Prosecutor

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

( ) Approved ( ) Denied

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

1  
2  
3  
4 **EXHIBIT A**  
5

6  
7 **Chapter 2.15**  
8 **STATUTORY COURT COMMISSIONER**

9 Sections:

10 2.15.010 Appointment—Duties

11 2.15.020 Compensation  
12

13 **2.15.010 Appointment – Duties.**

14 The superior court judges ~~shall appoint a family court commissioner and shall designate the~~  
15 ~~duties performed by that person.~~ are authorized to appoint one full-time statutory court  
16 commissioner to serve as the family court commissioner, mental health commissioner, and  
17 protection order commissioner. The duties of the statutory commissioner shall be consistent  
18 with those duties established by state law.  
19

20 **2.15.020 Compensation.**

21 The compensation for the ~~family court commissioner shall be consistent with that paid to~~  
22 ~~the full-time constitutional commissioners, on a pro rata basis.~~ statutory court commissioner  
23 shall be consistent with that paid to the full-time constitutional commissioners.  
24  
25  
26  
27



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-096

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<b>File ID:</b>	AB2022-096	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	02/01/2022	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Presentation		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Presentation on ranked choice voting

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Presentation on ranked choice voting

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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**Attachments:** CLC Issue Brief RCV PDF.pdf, How RCV Works 1-pager (DTC).pdf

By Alexandra Copper and Ruth Greenwood / August 17, 2018

## THE CIVIC BENEFITS OF RANKED CHOICE VOTING

### Eight Ways Adopting Ranked Choice Voting Can Improve Voting and Elections

“Consider asking a small child about her favorite ice cream. Chocolate, she might say. And what if there is no chocolate? you ask. Then she will have strawberry. And if there is no strawberry, she will settle with vanilla. The child just ranked three candidates: chocolate, strawberry, vanilla. That is all there is to [ranked choice voting].”<sup>1</sup>

#### 1. **Ranked choice voting encourages greater civility and less negative campaigning among candidates, as well as more direct outreach by candidates to voters.**

A traditional plurality voting system incentivizes candidates to engage in negative campaign tactics. Elections are a “zero-sum” game that usually come down to a choice between two major party candidates vying for votes.<sup>2</sup> Those candidates have clear incentives to disregard independent and third-party candidates who will not garner enough votes to pose a threat and, instead focus their energies on attacking each other, distinguishing themselves through negative messages about their opponent instead of affirmative issue-based campaigning.<sup>3</sup>

Ranked choice voting removes incentives for negative campaigning and increases civility among candidates, because it fosters more choice, more competition, and a greater need for cooperation. Each candidate must reach and attract a broader subset of the electorate, balancing efforts to win the most first choice votes, while not alienating other candidates’ supporters who might list them as a second or third choice.<sup>4</sup> Candidates, thus, will gain little from negative campaign

<sup>1</sup> Rob Richie, Caleb Kleppner, and Terrill Bouricius, *Instant Runoffs: A Cheaper, Fairer, Better Way to Conduct Elections*, 89.1 NATIONAL CIVIC REVIEW 95, 105 (Spring 2000).

<sup>2</sup> Caroline Tolbert, *Experiments in Election Reform: Voter Perceptions of Campaigns Under Preferential and Plurality Voting*, Presented at conference on Electoral Systems Reform, Stanford University 2 (Mar. 15-16, 2014).

<sup>3</sup> See Robert Richie, *Instant Runoff Voting: What Mexico (and Others) Could Learn*, 3.3 ELECTION LAW JOURNAL 501, 504 (2004); see also David Cobb, Patrick Barrett, and Caleb Kleppner, *Preserving and Expanding the Right to Vote: Ranked-Choice Voting*, 1 ADVANCE 107, 111-12 (2007).

<sup>4</sup> See Richie, *supra* note 3 at 504.



tactics and instead are encouraged to build coalitions with ideologically like-minded opponents.<sup>5</sup>

The capacity for ranked choice voting to increase civility of campaigns is well-documented. In several studies, researchers have analyzed voter perceptions of campaign tone and, time and again, have found that voters in ranked choice voting jurisdictions report less negative campaigning than voters in non-ranked choice voting jurisdictions.<sup>6</sup> In a 2013 survey, only 5 percent of responding voters in three ranked choice voting cities thought candidates criticized each other “a great deal” compared to 25 percent of respondents in non-ranked choice voting cities.<sup>7</sup> The same study found that, overall, respondents in non-ranked choice voting cities were more than three times more likely to report that local elections were more negative than in past years.<sup>8</sup>

A 2014 survey of California cities yielded similar results: 28 percent of responding voters in ranked choice voting cities reported that candidates criticized each other “a great deal” compared to 36 percent of respondents in non-ranked choice voting cities.<sup>9</sup> Overall, voters in non-ranked choice voting cities were 35 percent more likely to report that local campaigns were more negative than in past years.<sup>10</sup>

A third study found that people in ranked choice voting cities were almost twice as likely to report that local campaigns were significantly less negative than in past years, while voters in non-ranked choice voting cities were twice as likely to report that candidates criticized each other “some or most of the time.”<sup>11</sup>

It is not just voters who recognize the effects of ranked choice voting on campaign style. Candidates themselves also report greater civility in ranked choice voting elections.<sup>12</sup> In a survey of approximately 226 candidates across seven cities using ranked choice voting and twenty-five cities using traditional plurality voting, only 29 percent of candidates in ranked choice voting cities reported that their rival described them in negative terms, compared to nearly 40 percent of candidates in

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<sup>5</sup> Steven Hill and Robert Richie, *Success for Instant Runoff Voting in San Francisco*, NATIONAL CIVIC REVIEW 65, 66 (Spring 2005).

<sup>6</sup> See Sarah John and Andrew Douglas, *Candidate Civility and Voter Engagement in Seven Cities with Ranked Choice Voting*, NATIONAL CIVIL REVIEW 25, 26 (Spring 2017); see also Todd Donovan, Caroline Tolbert, and Kellen Gracey, *Campaign Civility Under Preferential and Plurality Voting*, 42 ELECTORAL STUDIES 157, 159-60 (2016); Tolbert, *supra* note 2 at 11-13.

<sup>7</sup> John and Douglas, *supra* note 6 at 26.

<sup>8</sup> *Id.* at 27.

<sup>9</sup> *Id.* at 26.

<sup>10</sup> *Id.* at 27.

<sup>11</sup> Donovan, Tolbert, and Gracey, *supra* note 6 at 160.

<sup>12</sup> Haley Smith, *Ranked Choice Voting and Participation: Impacts on Deliberative Engagement*, FairVote Civility Report #7 4 (Jun. 2016).

plurality voting cities.<sup>13</sup> Regarding their own campaigns, 21 percent of ranked choice voting candidates reported engaging in negative attacks on a rival, compared to 37 percent of plurality voting candidates.<sup>14</sup> Overall, 47 percent of candidates in ranked choice voting cities said that their elections were less negative than in previous years, compared to 37 percent of candidates in plurality voting cities.<sup>15</sup>

Research also shows that, in addition to fostering greater civility, ranked choice voting may have further positive effects on candidates' style of campaigning. Two studies have found that ranked choice voting candidates are more likely to reach out to and engage with voters directly than candidates in traditional plurality voting systems.<sup>16</sup> One study found that ranked choice voting candidates spent less time on the phone, less time meeting with staff, and more time campaigning door-to-door.<sup>17</sup>

The other study also found that ranked choice voting candidates were more likely to engage directly with voters, either in person or via email.<sup>18</sup> The authors of this study hypothesized that the increase in candidate outreach to voters stems from the very structure of ranked choice voting, which incentivizes candidates to seek support from broader sections of the electorate, including not only voters who would select the candidate as their first choice, but also voters who might support the candidate as a second or third choice.<sup>19</sup>

#### DEFINITIONS:

**First-Past-the-Post or Plurality Voting:** occurs where all voters get a single vote and the winning candidate is the one who gets the most amount of votes, even if it is not a majority.

**Ranked-Choice Voting:** allows voters to rank candidates, in order of preference, when marking their ballots. If a candidate receives a majority of the first-choice votes cast for that office, that candidate will be elected. However, if no candidate receives a majority of the first-choice votes cast, an elimination process begins. The candidate who received the fewest first-choice votes is eliminated. Next, each vote cast for that candidate will be transferred to the voter's next-ranked choice among the remaining candidates. This elimination process will continue until one candidate receives a majority and is deemed the winner.

<sup>13</sup> Todd Donovan, *Candidate Perceptions of Campaigns under Preferential and Plurality Voting*, Paper prepared for the workshop on Electoral Systems, Electoral Reform, and Implications for Democratic Performance, Stanford University 10 (Mar. 14-15, 2014).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Smith, *supra* note 12 at 9-12; see also Donovan, *supra* note 13 at 8-9.

<sup>17</sup> Donovan, *supra* note 13 at 8.

<sup>18</sup> Smith, *supra* note 12 at 9.

<sup>19</sup> *Id.* at 11.

## 2. **Ranked choice voting is more majoritarian and more democratic than traditional plurality voting.**

Traditional plurality voting—in which each voter may vote for only one candidate and the candidate who receives the most votes wins—is marked by a pervasive lack of competitiveness. Many electoral districts have become “safe districts” in which the incumbent or his or her party are all but guaranteed to win reelection. Statistics starkly highlight this problem. For example, in the 2002 and 2004 United States House elections, only eleven of more than 800 incumbents were defeated.<sup>20</sup> In 2006, 73 percent of House elections were won by margins of more than 20 percent.<sup>21</sup> In 2012, the average victory margin in House elections was 36 percent, and the minority party did not gain a new seat in the 177 most Republican districts and the 176 most Democratic districts.<sup>22</sup>

“**One study found that ranked choice voting candidates spent less time on the phone, less time meeting with staff, and more time campaigning door-to-door**”

Lack of competitiveness, coupled with low voter participation, ensures that many election results do not reflect the will of the majority of citizens. Plurality voting exacerbates this problem because it does not require a candidate to garner a majority of votes to win, just the most votes, and candidates are regularly elected without majority support. Since the Civil War, more than one third of American presidents have been elected by only a plurality.<sup>23</sup> And, in 2000, more than 20 percent of sitting governors were elected by a mere plurality, including several who did not even receive 40 percent of the vote.<sup>24</sup>

Furthermore, plurality voting is not a majoritarian system because it is plagued by problems of wasted votes, spoiler candidacies, and vote splitting. Voters who support independent, less popular, or third party candidates are often left with the unsavory choice of voting for their preferred candidate and wasting their vote or voting for a candidate they support less but who has a better chance of winning.<sup>25</sup> Plurality voting thus incentivizes voters to cast their ballots based on strategy and predicted outcome, rather than true political conviction.<sup>26</sup> Even when votes for minor

<sup>20</sup> Cobb, Barrett, and Kleppner, *supra* note 3 at 113.

<sup>21</sup> John Edward Porter, *Empowering Moderate Voters: Implement an Instant Runoff Strategy*, in OPPORTUNITY 08: INDEPENDENT IDEAS FOR AMERICA’S NEXT PRESIDENT 191, 192 (Brookings Institute, 2008).

<sup>22</sup> Rob Richie and Andrew Spencer, *The Right Choice for Elections: How Choice Voting Will End Gerrymandering and Expand Minority Voting Rights, from City Councils to Congress*, 47 U. RICH. L. REV. 959, 972 (2013).

<sup>23</sup> Tolbert, *supra* note 2 at 2.

<sup>24</sup> Richie, Kleppner, and Bouricius, *supra* note 1 at 97.

<sup>25</sup> Cobb, Barrett, and Kleppner, *supra* note 3 at 110.

<sup>26</sup> See Richie, Kleppner, and Bouricius, *supra* note 1 at 98.

candidates are not wasted, they can lead to spoiler candidacies, whereby an independent or third party candidate who stands no chance of actually being elected nevertheless receives enough votes to dictate the outcome of the election.<sup>27</sup>

Finally, plurality voting is susceptible to the problem of vote splitting, whereby voters cast their ballots for two candidates with similar platforms or ideologies, splitting the vote and allowing a third candidate to win.<sup>28</sup>

Ranked choice voting is, by its nature, a more majoritarian system than plurality voting because it requires a candidate to receive more than 50 percent of votes in order to win.<sup>29</sup> Ranked choice voting thus provides voters more democratic influence and maximizes their chances to help elect a candidate of their choosing. As an example, under ranked choice voting in Cambridge, Massachusetts, in 2013, 93 percent of voters were able to elect one of their top three candidate choices.<sup>30</sup>

Ranked choice voting is also more democratic and majoritarian because it avoids the problems of wasted votes, spoiler candidacies, and vote splitting. Voters may express their true political preferences freely without risking the pitfalls of winner-take-all plurality voting. Ranked choice voting thus “facilitates voter interest in self-expression.”<sup>31</sup>

### **3. Ranked choice voting encourages a greater number of candidates with more diverse backgrounds and views to run for office.**

Traditional plurality voting, which usually results in a contest between two candidates from the major political parties, suppresses independent and minor party candidacies.<sup>32</sup> Even within the major parties, plurality voting suppresses candidacies, as party leaders often try to avoid vote splitting by clearing the field for those candidates they believe are strongest.<sup>33</sup> The suppression of candidacies does not affect all equally, as it often falls hardest on those with the least political experience and influence, including first-time candidates, young candidates, candidates of color, female candidates, and low-income candidates.<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Andrew Douglas, *The Effect of Fair Representation Voting on 2013 Cambridge, Massachusetts Municipal Elections*, FairVote Research Report 10 (Feb. 2014). In this election, twelve candidates ran for nine positions.

<sup>29</sup> It is possible that voters will choose not to rank candidates beyond their first or second choice, and so it is technically possible to win under RCV without getting 50% of *all the possible votes*. In that case though, the winner will still have more than 50% of the votes that *ranked their choices all the way*.

<sup>30</sup> Douglas, *supra* note 28 at 10-11.

<sup>31</sup> Michael E. Lewyn, *Two Cheers for Instant Runoff Voting*, 6 PHOENIX L. REV. 117, 125 (2012).

<sup>32</sup> Cobb, Barrett, and Kleppner, *supra* note 3 at 110-11.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 111.

Ranked choice voting eliminates the problem of candidacy suppression and, instead, encourages more people to run for office. This is evident in a case study of Minneapolis, Minnesota, where the number of candidates for local office nearly doubled after the introduction of ranked choice voting, increasing from 25 candidates in 2005 to 47 in 2013.<sup>35</sup> Not only did more candidates run for office, but local races became more competitive. While not a single ward in 2005 had more than two candidates for city council, by 2013, ten of the thirteen wards had more than two candidates running for each seat.<sup>36</sup>

Ranked choice voting not only encourages more people to run for office, it encourages more diverse candidates to run. More diversity means greater representation of traditionally underrepresented demographic groups. In particular, because ranked choice voting eliminates the problem of vote splitting, candidates from underrepresented groups need not worry about competing for voters and may, instead, all run for office and work together to ensure representation for the group.<sup>37</sup> Studies have confirmed that ranked choice voting benefits minority candidates, including candidates of color and women running for office.<sup>38</sup>

More diversity also means candidates with more diverse views and policy platforms. Moderate, independent, and third-party candidates may run and champion their ideas without fear of spoiling the election for major party candidates, and voters may support these candidates without fear of wasting their vote.<sup>39</sup>

Ranked choice voting, thus, encourages more people to run for office and more diversity among those candidates, developments that are good for American voters and American democracy.

#### **4. Because ranked choice voting encourages more diverse candidates to run for office, it may, in turn, reduce political polarization.**

Political polarization is high in traditional plurality elections. Turnout is low and candidates may win simply by mobilizing and championing the views of a core group of committed supporters, who are often more ideologically extreme than the broader

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<sup>35</sup> David Kimball and Joseph Anthony, *Voter Participation with Ranked Choice Voting in the United States*, University of Missouri-St. Louis, Department of Political Science 20 (Oct. 2016), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjEmqnJnPnbAhVqw1kKHxsBBNEQFggpMAA&url=http%3A%2F%2Fwww.umsi.edu%2F~kimballd%2FKimballRCV.pdf&usq=AOvVawlw2l-R9zBu\\_hf3DpJOivc-](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjEmqnJnPnbAhVqw1kKHxsBBNEQFggpMAA&url=http%3A%2F%2Fwww.umsi.edu%2F~kimballd%2FKimballRCV.pdf&usq=AOvVawlw2l-R9zBu_hf3DpJOivc-).

<sup>36</sup> *Id.*

<sup>37</sup> The New America Foundation and FairVote, *Instant Runoff Voting and Its Impact on Racial Minorities* 8 (Jun. 2008); Andrew Spencer, Christopher Hughes, and Rob Ritchie, *Escaping the Thicket: The Ranked Choice Voting Solution to America's Redistricting Crisis*, 46 CUMB. L. REV. 377, 404 (2015); see also Ritchie and Spencer, *supra* note 22 at 959.

<sup>38</sup> Spencer, Hughes, and Ritchie, *supra* note 37 at 405, 419-20; Ritchie and Spencer, *supra* note 22 at 1007-08.

<sup>39</sup> Lewyn, *supra* note 31 at 125; Hill and Ritchie, *supra* note 5 at 65.

electorate.<sup>40</sup> Plurality voting further exacerbates polarization because it typically results in a contest between only two candidates, leaving voters with a purely binary choice between individuals who are more partisan than the average citizen.<sup>41</sup>

Ranked choice voting may reduce political polarization because it encourages more diverse candidates and greater competition in local and state elections.<sup>42</sup> In fact, in a 2015 survey, prominent political and election law scholars selected ranked choice voting as the number one proposed reform, out of thirty-seven, in terms of positive impact on policymaking across party lines.<sup>43</sup> Indeed, the scholars voted ranked choice voting the most impactful proposed reform overall.<sup>44</sup>

Figure 1: Candidates Reporting Negative Portrayal by Opponents, 2011-2013<sup>45</sup>

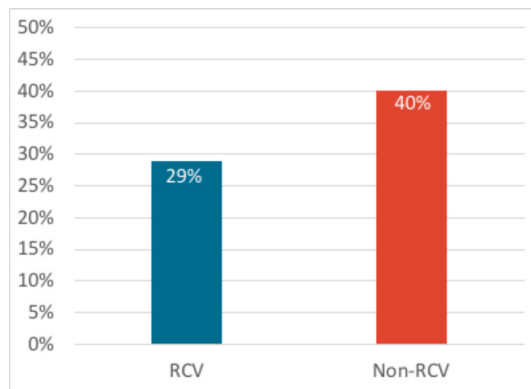
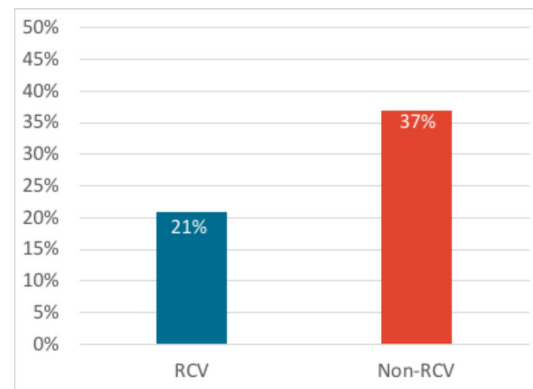


Figure 2: Candidates Admitting to Portraying Opponents Negatively, 2011-2013<sup>46</sup>



## 5. Ranked choice voting may decrease the influence of big money in politics.

While research on this subject is only preliminary, ranked choice voting may decrease the influence of big money in political campaigns. Because ranked choice voting allows for more candidates with more diverse views to run, including independent and third-party candidates, there will be greater competition in many local and state elections. Candidates who spend less money have a greater chance of

<sup>40</sup> Sarah John and Brandon Leinz, *Polarization and Multi-Winner Ranked Choice Voting in Cambridge, Massachusetts, City Council Elections*, FairVote Civility Report No. 6, 6 (Apr. 2016).

<sup>41</sup> *Id.*

<sup>42</sup> Porter, *supra* note 21 at 197.

<sup>43</sup> Spencer, Hughes, and Ritchie, *supra* note 37 at 418-19.

<sup>44</sup> *Id.*

<sup>45</sup> John and Douglas, *supra* note 6 at 26. Chart adapted from FairVote, *Ranked Choice Voting in Practice: Candidate Civility in Ranked Choice Elections, 2013 & 2014 Survey Brief* (2015), <https://fairvote.app.box.com/v/APSA-Civility-Brief-2015>.

<sup>46</sup> Chart adapted from FairVote, *supra* note 45.



winning than they do under the current system, thus potentially diminishing the influence of big donors on the outcome of elections.<sup>47</sup>

In one study of ranked choice voting in Pierce County, Washington, the authors found that, in 2004, under a traditional plurality voting system, the candidates who spent the most won in five out of six races studied.<sup>48</sup> In 2008, after the county adopted ranked choice voting, candidates who spent the most won in only three out of six races.<sup>49</sup> This result suggests preliminarily that the adoption of ranked choice voting may diminish the effect of campaign finance on election outcomes.<sup>50</sup>

## **6. Ranked choice voting saves jurisdictions money because it eliminates the need for multiple rounds of voting.**

Multiple rounds of voting for a single office, including primary elections, general elections, and runoff elections, can be costly and time intensive for cities and states to administer. By one estimate, election administration costs an average of one to two dollars per resident per election, though the cost can be much higher in small and special elections.<sup>51</sup> The burden of multiple rounds of voting falls not only on taxpayers but also on election officials and poll workers, as well as candidates, who are forced to raise campaign funds for successive elections, often with little time in between.<sup>52</sup>

Ranked choice voting alleviates the burden of multiple rounds of voting by compressing them into a single election, through a process that is sometimes called 'instant runoff voting'. Ranked choice voting can be used to replace the combination of primary and general elections or eliminate entirely the need for expensive runoffs.<sup>53</sup> Because ranked choice voting requires only one election to produce a majority winner, it minimizes costs for taxpayers and eliminates the need for candidates to raise additional campaign funds.

The financial benefits of ranked choice voting to cities and states is well-documented. As an example, prior to its adoption of ranked choice voting, the city of San Francisco was forced to hold citywide runoff elections in 1999, 2001, and 2003, spending more than \$3 million to do so in 2003 alone.<sup>54</sup> The city adopted ranked choice voting in 2004 and, just that year, saved \$1.2 million by avoiding four runoff

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<sup>47</sup> Cobb, Barrett, and Kleppner, *supra* note 3 at 114.

<sup>48</sup> Loren Collingwood, Todd Donovan, and Matt Barreto, *An Assessment of Rank Choice Voting's Debut in Pierce County, WA: A Research Report of the Washington Poll* 14 (Jun. 8, 2009).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Richie, Kleppner, and Bouricius, *supra* note 1 at 99.

<sup>52</sup> *Id.*; see also Cobb, Barrett, and Kleppner, *supra* note 3 at 111.

<sup>53</sup> See Tolbert, *supra* note 2; see also Richie, Kleppner, and Bouricius, *supra* note 1 at 102.

<sup>54</sup> Hill and Richie, *supra* note 5 at 66.



elections, more than enough to offset the one-time costs associated with transition to a ranked choice voting system.<sup>55</sup>

Ranked choice voting has yielded similarly cost-effective results in other cities. The implementation of ranked choice voting in San Leandro, Berkeley, and Oakland, California led to the avoidance of a total of seventeen runoffs in just three election cycles, saving taxpayers millions of dollars and city officials untold amounts of administrative resources.<sup>56</sup>

Ranked choice voting, thus, will save cities and states, as well as taxpayers, money normally required to administer multiple rounds of voting.

**7. By eliminating multiple rounds of voting, ranked choice voting avoids the decline in voter participation that occurs in most primary and runoff elections.**

Voter turnout in most American elections is dismally low. In the 2014 midterm elections, the national turnout of voters was only 36.4%, the lowest rate of participation in 72 years.<sup>57</sup> Worse still, local elections have traditionally seen even lower voter participation rates: in 2016, fewer than 20% of eligible voters voted in mayoral elections.<sup>58</sup> Many political scientists have attributed low voter turnout to the large number of elections held in the United States.<sup>59</sup> The more times voters are asked to vote—in primaries, general elections, and runoffs—the less likely they are to do so in any particular election.

Ranked choice voting eliminates the need for multiple rounds of voting and, therefore, avoids the decline in participation that occurs in most primary and runoff elections.<sup>60</sup> Ranked choice voting simplifies the demands on voters by allowing them to express their political preferences through a single ballot in a single election.

In addition, because it demands only one election, ranked choice voting affords jurisdictions the flexibility to schedule their elections to coincide with elections for other state and federal offices, when voter turnout will be highest.<sup>61</sup>

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<sup>55</sup> *Id.* at 67.

<sup>56</sup> Madeline Alys Henry, *The Implementation and Effects of Ranked Choice Voting in California Cities* 28 (Fall 2016) (unpublished M.A. thesis, California State University, Sacramento).

<sup>57</sup> Jose A. DelReal, *Voter Turnout in 2014 Was the Lowest Since WWII*, WASH. POST, Nov. 10, 2014, [https://www.washingtonpost.com/news/post-politics/wp/2014/11/10/voter-turnout-in-2014-was-the-lowest-since-wwii/?utm\\_term=.829153987bca](https://www.washingtonpost.com/news/post-politics/wp/2014/11/10/voter-turnout-in-2014-was-the-lowest-since-wwii/?utm_term=.829153987bca).

<sup>58</sup> Kriston Capps, *In the U.S., Almost No One Votes in Local Elections*, CityLab, Nov. 1, 2016, <https://www.citylab.com/equity/2016/11/in-the-us-almost-no-one-votes-in-local-elections/505766/>.

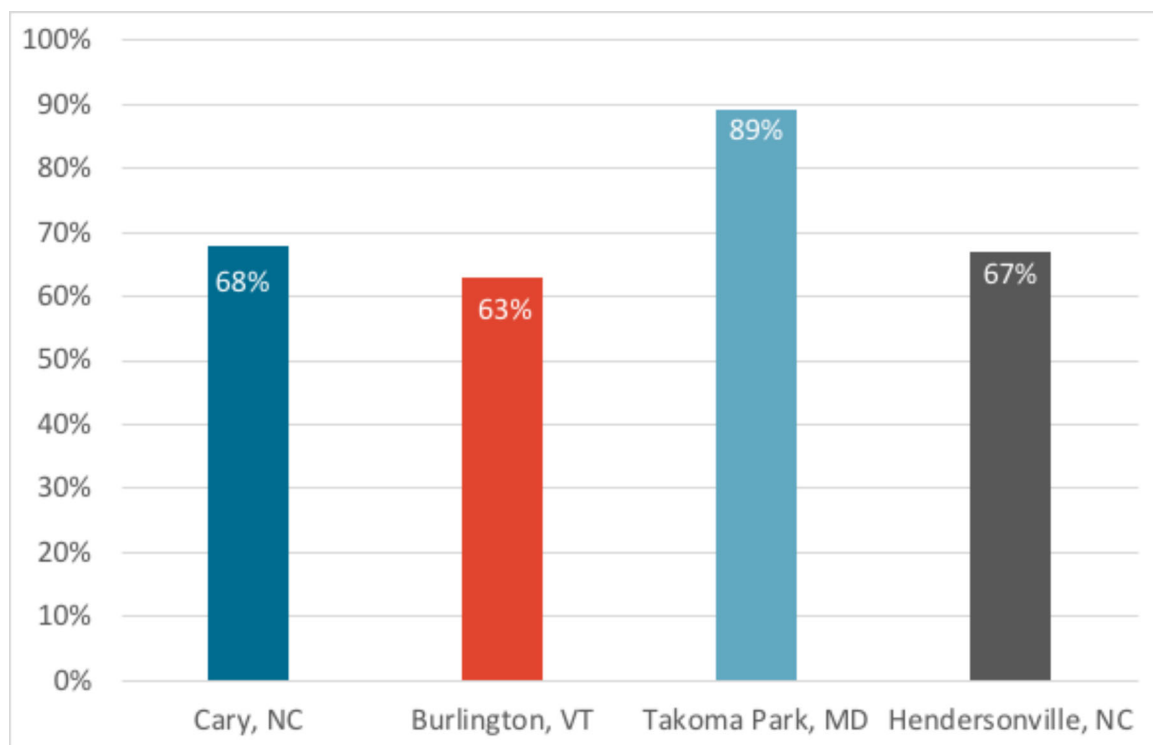
<sup>59</sup> Richie, *supra* note 3 at 505.

<sup>60</sup> Kimball and Anthony, *supra* note 35 at 1.

<sup>61</sup> Richie, Kleppner, and Bouricius, *supra* note 1 at 102; see also The New America Foundation and FairVote, *supra* note 37 at 5.

Research demonstrates the positive effect that ranked choice voting has on voter participation rates when compared to primary and runoff elections. One national study found that ranked choice voting led to a nearly 10 percent increase in voter turnout compared to plurality primaries and runoffs.<sup>62</sup> Another study of voter participation rates in San Francisco's 2005 elections—only the city's second year using ranked choice voting—voter turnout increased approximately 2.7 times.<sup>63</sup> In particular, the city experienced increases in voter participation in its six most racially and economically diverse neighborhoods, where turnout nearly quadrupled.<sup>64</sup>

Figure 3: Level of Support for Continued Use of Ranked Choice Voting instead of Plurality Systems<sup>65</sup>



**8. Voters demonstrate high levels of understanding and satisfaction with ranked choice voting in jurisdictions that have adopted it.**

Research to date overwhelmingly shows that voters in jurisdictions that use ranked choice voting understand and are satisfied with the voting system. In a 2013 survey of American cities using ranked choice voting, 90 percent of respondents

<sup>62</sup> Kimball and Anthony, *supra* note 35 at 5; see also Elliot Louthen, *Ranked Choice Voting in Practice: Analysis of Voter Turnout in RCV Elections*, FairVote RCV Civility Brief No. 8 2-3 (Nov. 2015).

<sup>63</sup> The New America Foundation and FairVote, *supra* note 37 at 4.

<sup>64</sup> *Id.* But see Kimball and Anthony, *supra* note 35 at 19 (finding, in a case study of Minneapolis, similar levels of socioeconomic and racial disparities in voter participation).

<sup>65</sup> The New America Foundation and FairVote, *supra* note 37 at 2.

found the ballot easy to understand.<sup>66</sup> Similarly, in a 2014 survey of California cities using ranked choice voting, 89 percent of respondents in those cities found the ballot easy to understand.<sup>67</sup>

Examination of voters in individual cities have yielded similar results. After Minneapolis' first election using ranked choice voting in 2009, voters were surveyed and 90 percent indicated that they understood the voting system "perfectly well" or "fairly well."<sup>68</sup> Similarly, in San Francisco's first election using ranked choice voting in 2004, 85 percent of voters indicated that they understood the ballot "very" or "fairly" well.<sup>69</sup>

Voters not only understand ranked choice voting but are satisfied with it. A majority of voters surveyed in both the 2013 and 2014 surveys mentioned above supported the continued use of ranked choice voting in their local elections. In the 2013 survey, 62 percent of voters supported the continued use of ranked choice voting, and 57 percent of voters in the 2014 survey supported it.<sup>70</sup> Even voters in cities that did not use ranked choice voting supported its introduction. In 2013, 49 percent of responding voters in cities using traditional plurality voting supported the introduction of ranked choice voting, and 54 percent of California voters surveyed in 2014 were in favor of the introduction of ranked choice voting in their cities.<sup>71</sup>

Studies of voters in individual cities already using ranked choice voting have documented similar levels of support. Sixty-eight percent of voters in Cary, North Carolina, 63 percent of voters in Burlington, Vermont, 89 percent of voters in Takoma Park, Maryland, and 67 percent of voters in Hendersonville, North Carolina supported the continued use of ranked choice voting instead of traditional plurality voting systems.<sup>72</sup>

In the words of one researcher, "to know [ranked choice voting] is to like it."<sup>73</sup>

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<sup>66</sup> John and Douglas, *supra* note 6 at 26. *But see* Kimball and Anthony, *supra* note 35 at 22 (finding similar rates of voter confusion in plurality and ranked choice voting elections).

<sup>67</sup> *Id.*

<sup>68</sup> Lewyn, *supra* note 31 at 132.

<sup>69</sup> *Id.*

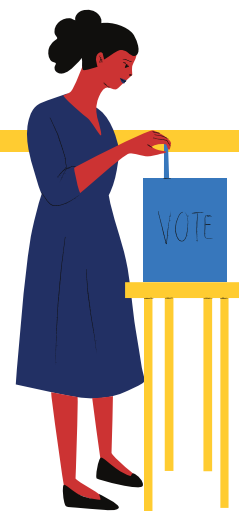
<sup>70</sup> John and Douglas, *supra* note 6 at 26.

<sup>71</sup> *Id.*

<sup>72</sup> The New America Foundation and FairVote, *supra* note 37 at 2.

<sup>73</sup> Tolbert, *supra* note 2 at 13-14.

# HOW RANKED-CHOICE VOTING WORKS



## The Basics

Ranked choice voting (RCV) is a simple improvement to the way we vote. With RCV, you can rank candidates on your ballot in the order you prefer: 1st choice, 2nd choice, 3rd choice, and so on. If your favorite can't win, your vote counts for your next choice.

	Preference Ranking			
	1st Choice	2nd Choice	3rd Choice	4th Choice
Candidate A	●	○	○	○
Candidate B	○	○	○	●
Candidate C	○	○	●	○
Candidate D	○	●	○	○

## Questions?

Email Stephanie Houghton  
[stephanie.houghton@fairvotewa.org](mailto:stephanie.houghton@fairvotewa.org)

## Why would a community adopt RCV? Because RCV...

**GIVES VOTERS A STRONGER VOICE** since they can vote sincerely for their true values without fear of wasting their vote. If your favorite can't win, your vote still counts for your next choice.

**PROVIDES VOTERS WITH MORE CHOICES.** Since candidates don't need to worry about "vote-splitting", more candidates are encouraged to run.

**REWARDS ISSUE-DRIVEN CAMPAIGNS AND REDUCES POLARIZATION** by limiting the effectiveness of negative campaigning.

**ENSURES WINNERS OF SINGLE-SEAT OFFICES HAVE MAJORITY SUPPORT.**

Under our current system "vote-splitting" in crowded fields can cause unpopular candidates to get through the top-two primary or even win election.

**CAN SAVE MONEY.** Primary elections are expensive and see very low voter turnout. By using ranked choice voting, a municipality or district can combine the primary with a single, high turnout general election.

**ENSURES BOTH MAJORITY RULE AND FAIR MINORITY REPRESENTATION.**

When used for multi-seat offices, like city and county councils, ranked-choice voting can ensure every community is fairly represented in government. This promotes racial and ideological diversity and renders gerrymandering obsolete.



[Watch a video!](#)

**FairVote**  
WASHINGTON

# WHO IS IN THE MOVEMENT?

Ranked-Choice Voting is a sensible voting system that has bipartisan support and has been endorsed by national leaders:



SEN. ELIZABETH WARREN (D)



GOV. BILL WELD (R)



SEN. JOHN MCCAIN (R)



ANDREW YANG (I)



SEN. BERNIE SANDERS (D)



REP. AYANNA PRESSLEY (D)



GOV. GARY HERBERT (R)



SEC. JOHN KERRY (D)

## News Outlet Endorsements

The Boston Globe

The New York Times

The Washington Post

The Economist

## WHERE IS IT USED?

### POTUS PRIMARIES

6 States

### MILITARY/OVERSEAS

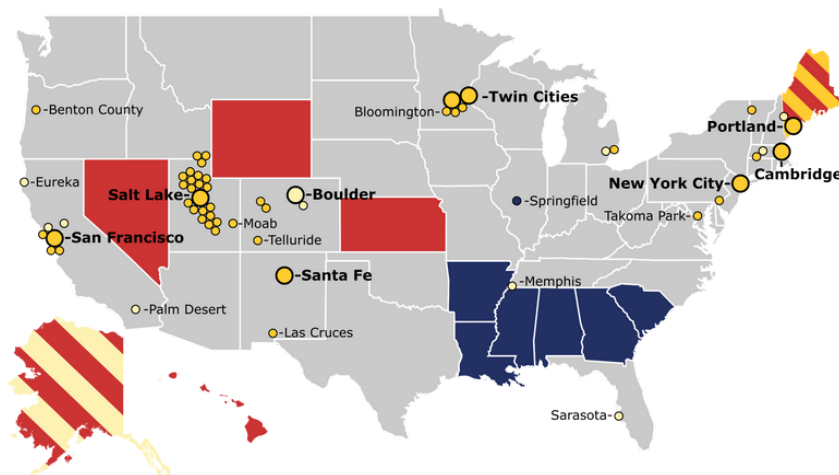
5 states  
1 City

### ALL ELECTIONS

1 State  
1 County  
18 Cities

### JUST APPROVED

1 State  
13 Cities



## Support from Local Leaders



Washington Community Alliance  
KAMAU CHEGE



Former WA GOP Party Chair  
CHRIS VANCE



Former Legislator and Mayor  
DEB EDDY



See all supporters

324

FairVote  
WASHINGTON



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Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2021-345

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<b>File ID:</b>	AB2021-345	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	06/11/2021	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Discussion regarding reopening Council operations to the public

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding reopening Council operations to the public

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
06/15/2021	Council Special Committee of the Whole	DISCUSSED	
07/13/2021	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	

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**Attachments:** Notes on Opening Chambers

### **Current Setup for Hybrid Meetings:**

- Audio: USB audio integration has been installed for a County provided PC running Zoom with the Chambers audio/video system. This allows the audio from the County provided PC to be heard over the sound system. It also allows the audio from the room system to be heard by the far side participants on the Zoom meeting.
- Video: Councilmembers participating from the Chambers will be streamed to Zoom as one panelist (one single shot of the entire dais). Councilmembers participating remotely will continue to be shown as individual panelists.
- Remote public participation: By phone or digital device (no camera sharing).
- In-person public participation: Attendees in Chambers, with view of the Zoom meeting projected live on screen (in-person public participants will not be shown on camera).

### **Current Requirements for Participating In-Person:**

- Per state guidelines, masks are required for all in-person participants (councilmembers, staff, audience members), regardless of vaccination status.
- If masking requirements are not met at any time during a public meeting with an in-person component, the meeting will be recessed until compliance is restored, or if compliance cannot be restored then the meeting will be adjourned, continued, or otherwise terminated. If the masking issue cannot be resolved, the meeting should be continued remote-only.
- Continuing, recessing, and adjourning a meeting requires a majority vote of the council. The presiding officer does not have unilateral authority. If the council does not act, the administrator/executive, as an employer, has an obligation to ensure safe work conditions for all staff. Staff should not be compelled to attend in-person meetings that violate [LNI Publication F414-164](#) or, if applicable, [ESSB 5115](#), the Health Emergency Labor Standards Act (protections for high-risk workers).

### **Future Setup for Hybrid Meetings:**

- In December 2021, funding (\$41,500) for the next phase of technology for hybrid meetings was approved for 2022. IT and Facilities are working on finalizing a scope of work and will then be bringing it to Council for review and approval.

### **Considerations:**

- If a hybrid meeting is moved from the Chambers to remote-only, all councilmembers participating in-person will need a laptop or webcam available at the Council Office.
- If a hybrid meeting is moved from the Chambers to remote-only and two councilmembers share an office, should there be a plan in place to provide an alternate space within the Council Office suite for one of the two members to relocate for the duration of the meeting?
- Who will be responsible for ensuring all meeting participants follow mask requirements?





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-097

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<b>File ID:</b>	AB2022-097	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	02/01/2022	<b>Entered by:</b>	CHalka@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>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Discussion on renaming Natural Resources Committee

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion on renaming Natural Resources Committee

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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**Attachments:** Draft Ordinance for Discussion

PROPOSED BY: GALLOWAY  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AMENDING WHATCOM COUNTY CODE 2.02.075, STANDING COMMITTEES  
TO RENAME NATURAL RESOURCES COMMITTEE

**WHEREAS**, the 2021 Whatcom County Climate Action Plan was adopted by County Council on November 9, 2021 (Resolution 2021-049); and

**WHEREAS**, the Climate Action Plan includes a focus on mitigation and adaptation to climate change and building climate resilience in our county; and

**WHEREAS**, the Whatcom County Council wishes to support the recommendations of the Climate Action Plan by renaming the Council's Natural Resources Committee to be the Climate Action and Natural Resources Committee.

**NOW, THEREFORE, BE IT THEREFORE ORDAINED** by the Whatcom County Council that Whatcom County Code Section 2.02.075 is hereby amended as outlined in Exhibit A to this ordinance.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Karen Frakes (by phone 2/1/2022)

\_\_\_\_\_  
Civil Deputy Prosecutor

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

(    ) Approved      (    ) Denied

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

**EXHIBIT A**

2.02.075 Standing committees – Established.

The following committees are established:

A. Finance and Administrative Services. General areas of responsibility for this committee shall be budget, taxation and purchasing issues, personnel policies and union negotiations;

B. Planning and Development. General areas of responsibility for this committee shall be zoning, development, stormwater, and fire;

C. Public Works and Health. General areas of responsibility for this committee shall be road construction and vacations, new construction, remodeling, public utilities issues, solid waste and health-related issues referred to the committee by the health board, public health advisory board, or health department;

D. Climate Action and Natural Resources. General areas of responsibility for this committee shall be climate change mitigation and adaptation, water, forestry, agriculture, fishery and mineral issues;

E. Criminal Justice and Public Safety. General areas of responsibility for this committee shall be criminal justice activities and planning, public safety, and law enforcement.

(Ord. 2017-081 Exh. A; Ord. 2012-010 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: AB2021-594

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<b>File ID:</b>	AB2021-594	<b>Version:</b>	1	<b>Status:</b>	Held In Committee
<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 Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<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:
10/26/2021	Council	SUBSTITUTE INTRODUCED	Council Finance and Administrative Services Committee
11/09/2021	Council Finance and Administrative Services Committee	FORWARDED TO COUNCIL WITH RECOMMENDED MOTION(S)	
11/09/2021	Council	HELD IN COMMITTEE	Council Committee of the Whole

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**Attachments:** Proposed Ordinance, Proposed Ordinance - tracked changes, Substitute Ordinance for Oct 26 2021, Substitute Ordinance for Oct 26 2021 - tracked changes, Comparison of proposed and substitute ordinances

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.

~~6F.~~ 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  
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*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 10/24/2021)  
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 21 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. The term medical condition as used in this section is not intended to include physical disabilities which do not impair judgement such as blindness, deafness, paralysis or epilepsy etc.

E. The Executive shall immediately provide notice to the Deputy Executive and the Executive Pro Tempore of any anticipated absences or periods of inability to perform their duties.

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ORDINANCE NO. \_\_\_\_\_

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**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 10/24/2021)  
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.

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~~EF~~. 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**

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*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.*

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**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 10/1924/2021))  
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.

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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~~21 days if the Executive remains available to the county staff and the county council by phone or video conferencing during normal business hours.

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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: AB2022-079

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<b>File ID:</b>	AB2022-079	<b>Version:</b>	2	<b>Status:</b>	Introduced
<b>File Created:</b>	01/25/2022	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 2.02.085, Council Standing Committees - Committee Action

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED	Council Committee of the Whole

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**Attachments:** Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE 2.02.085, COUNCIL STANDING  
COMMITTEES – COMMITTEE ACTION**

**WHEREAS**, pursuant to Whatcom County Code 2.02.040(E), all Whatcom County Council meetings, including its committee meetings, are to be conducted in accordance with the American Institute of Parliamentarians' Standard Code of Parliamentary Procedure, latest edition (hereinafter referred to as the "code of parliamentary procedure"), unless in conflict with the rules of the Council; and

**WHEREAS**, the code of parliamentary procedure states that "all committees are responsible to and under the direction and control of the authority that created them"; and

**WHEREAS**, the code of parliamentary procedure further states that "any subject or duty that has been assigned to a committee may be withdrawn at any time and assigned to another committee or considered by the body" and that "any proposal or assignment of work to a standing committee may be withdrawn by the governing body unless it is assigned exclusively to the committee by the bylaws"; and

**WHEREAS**, there is nothing currently in the county code that would prevent the Council from withdrawing any proposed item from any of its committees consistent with the code of parliamentary procedure; and

**WHEREAS**, after years of Council practice consistent with the code of parliamentary procedure, it has recently been suggested that a committee can hold a proposed item in committee and effectively prevent the full council from taking action on the proposed item; and

**WHEREAS**, it is the desire of the Council to place the language from the code of parliamentary procedure directly into the county code so that it is readily apparent that the Council can withdraw any proposed item from a committee at any time and consider the proposed item as a full council.

**NOW, THEREFORE, BE IT THEREFORE ORDAINED** by the Whatcom County Council that Section 2.02.085 is hereby amended as outlined in Exhibit A to this ordinance.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Civil Deputy Prosecutor

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

(    ) Approved            (    ) Denied

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

## EXHIBIT A

### 2.02.085 – Committee Action.

A recommendation of any committee shall be agreed to by a majority of the committee in a regularly called meeting before a proposed item is reported out. All actions of a committee pertaining to an ordinance that has been properly introduced, as specified elsewhere in this chapter, will be reported out to the full council for final consideration. A committee report may contain only that information which is approved by a majority vote of the committee; however, minority reports may be presented to the full council after the committee report is presented. A majority recommendation of the committee may be "do pass," "do pass as amended," "do pass the attached substitute ordinance," "do not pass," "no recommendation," "postpone indefinitely" or "withdraw." Minority reports may also be submitted. Any proposed item assigned to or referred to a standing committee, including an ordinance, may be withdrawn from the standing committee at any time and considered by the full council.



# Whatcom County

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

## Agenda Bill Master Report

**File Number: MIN2022-008**

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<b>File ID:</b>	MIN2022-008	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/20/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

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

REVISED MINUTES for Regular County Council on December 7, 2021

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

The December 7, 2021 County Council minutes were approved on Council on January 11, 2022. This is a revised version of those minutes for approval and would supercede the original minutes if approved. The amendment is on page 9 under OTHER ITEMS AB2021-743.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** REVISED Council Dec 7 2021

# **Whatcom County Council**

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



## **Minutes - Draft Minutes-revised**

**Tuesday, December 7, 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); AGENDA  
REVISED 12.6.2021**

### **COUNCILMEMBERS**

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

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## COUNTY COUNCIL

### CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:01 p.m. in a virtual meeting.

### ROLL CALL

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, and Kathy Kershner

**Absent:** None

### FLAG SALUTE

### ANNOUNCEMENTS

The Whatcom County Council and County Executive are seeking applications from county residents who want to participate on citizen advisory boards and committees that span a wide range of important local issues. Applications are due 10:00 a.m. on Tuesday, January 4, 2022. A complete list of vacancies is on the County website. Applicants must be residents and registered voters in Whatcom County, and must also meet the specific requirements of the positions.

### SPECIAL PRESENTATION TO COUNCILMEMBER BROWNE

Buchanan presented a certification of recognition, gratitude, and appreciation to Councilmember Browne for his eight years of service as a Whatcom County Councilmember.

Browne read parting remarks into the record and fellow Councilmembers conveyed to him their thoughts, thanks, and best wishes.

*Clerk's note:* Byrd joined the meeting sometime after 6 p.m.

Tyler Schroeder, Executive's Office, also thanked Councilmember Browne on behalf of the County Administration.

### COUNTY EXECUTIVE'S REPORT

There was no Executive Report.

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

1. [AB2021-722](#) Request confirmation of the County Executive's appointment of Allison Hunt, M.D. to serve as Whatcom County Medical Examiner

***Browne moved*** and Donovan seconded that the Executive Appointment be CONFIRMED.

Allison Hunt, Whatcom County Medical Examiner appointee, introduced herself to the Councilmembers and answered whether she will continue to work for Skagit County.

**Browne's motion that the Executive Appointment be CONFIRMED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

### **MINUTES CONSENT**

Kershner ***moved*** to accept the minutes consent items and thanked the former Medical Examiner. The motion was seconded by Donovan (see votes on individual items below).

1. [MIN2021-088](#) Special Council for November 17, 2021

**Kershner moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [MIN2021-089](#) Committee of the Whole Executive Session for November 23, 2021

**Kershner moved and Donovan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

### **SPECIAL PRESENTATION**

1. [AB2021-699](#) Report on the WHAT-COMM discussions related to consolidating the Fire/EMS and Police 911 dispatch facilities

Browne briefed the Councilmembers.

Scott Korthuis, City of Lynden Mayor and What-Comm Administrative



Board, presented and he and Councilmembers discussed having two locations for redundancy in a natural disaster, looking at statistics for survival rate as well as response times compared to other counties, what the next step would be in considering consolidation, whether there is existing comparison of response times between Whatcom County and other counties, continuing the work on this issue, and improving recruitment and retention by having the best system in place.

**This agenda item was PRESENTED AND DISCUSSED.**

## **PUBLIC HEARINGS**

Council staff played a short instructional video about how to speak at the meeting.

1. [AB2021-654](#) Resolution approving the Shoreline Management Program Periodic Update 2020  
Cliff Strong, Planning and Development Services Department, stated he did not have a report.

Buchanan opened the Public Hearing and the following people spoke:

- Bill Geyer
- Wendy Harris
- Dwayne Engelsman

Hearing no one else, Buchanan closed the Public Hearing.

***Donovan moved*** and Browne seconded that the SUBSTITUTE Resolution Requiring a Public Hearing be APPROVED.

***Kershner moved*** to remove 16.16.900 subsection (7) (Definitions), definition of “Qualified professional” on page 132 of Exhibit F. The motion was seconded by Elenbaas.

Karen Frakes, Prosecuting Attorney's Office, answered whether it would be a substantial change and stated that if amended it would at least need to have another public hearing.

Councilmembers discussed the motion and staff answered whether the County has ever been sued for rejecting someone for the reasons stated in the subsection.

The motion failed by the following vote:

**Aye:** 3 - Elenbaas, Kershner, and Byrd

**Nay:** 4 - Donovan, Frazey, Browne, and Buchanan

**Donovan's motion that the SUBSTITUTE Resolution Requiring a Public Hearing be APPROVED carried by the following vote:**

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 3 - Byrd, Elenbaas, and Kershner

**Absent:** 0

Enactment No: RES 2021-056

2. [AB2021-733](#) Ordinance Authorizing the Levy of Taxes for Conservation Futures Purposes for 2022

Buchanan opened the Public Hearing and the following person spoke:

- Wendy Harris

Hearing no one else, Buchanan closed the Public Hearing.

**Frazey moved** and Donovan seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the motion.

**Frazey's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:**

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 3 - Byrd, Elenbaas, and Kershner

**Absent:** 0

Enactment No: ORD 2021-085

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

The following people spoke:

- Frank Lawrence III
- Misty Flowers
- Rachel Lindsay
- Melissa Wisener
- Markis D. Stidham
- Cliff (last name not given)
- Enoch Mann

- Sara Rose
- Jen Durant
- Natalie Chavez
- Shean Halley
- Nancy Bergman
- Jean Purcell
- Ken Domorod
- Wendy Harris
- David Spring
- (Name not given)
- Hannah Ordos
- Heather Katahdin

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 1-14. Councilmembers voted on those items (see votes on individual items below).

1. [AB2021-685](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Catholic Community Services to provide housing case management services in the amount of \$336,678 for a total amended contract amount of \$505,017

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

2. [AB2021-687](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lydia Place to provide housing case management services in the amount of \$377,158 for a total amended contract amount of \$600,839

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

3. [AB2021-688](#) 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 \$357,542 for a total amended contract amount of \$565,310

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

4. [AB2021-690](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and YWCA Bellingham to provide housing case management services in the amount of \$78,565 for a total amended contract amount of \$117,498

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

5. [AB2021-691](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lydia Place to provide emergency housing for families in the amount of \$493,074 for a total amended contract amount of \$847,996

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

6. [AB2021-698](#) Request authorization to amend and extend the Master Collective Bargaining Agreement for the period January 1, 2022 - December 31, 2022

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

7. [AB2021-701](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center in the amount of \$1,650,248 for a total amended contract amount of \$4,158,271

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

8. [AB2021-702](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Mount Baker Foothills Chamber and Visitor Center for operations and tourism, in the amount of \$110,000

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

9. [AB2021-705](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Tune-Up Events, LLC to promote Whatcom County tourism in the amount of \$50,000

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

10. [AB2021-706](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington Traffic Safety Commission for high visibility enforcement patrols, in the amount of \$7,800.00

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

11. [AB2021-707](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington Traffic Safety Commission for high visibility enforcement patrols, in the amount of \$15,000.00.

**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:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

12. [AB2021-710](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and Bellingham Whatcom County Tourism for operational and tourism related activities in the amount of \$290,000

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

13. [AB2021-711](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and Birch Bay Chamber of Commerce for operational costs associated with the visitor center in the amount of \$110,000

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

14. [AB2021-739](#) Request authorization for the County Executive to enter into a three-year agreement, using the State of Washington contract, between Whatcom County and Insight Public Sector for the NeoGov Insight online recruitment software, in the amount of \$47,610.25

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

## **OTHER ITEMS**

**(From Council Natural Resources Committee)**

1. [AB2021-743](#) Resolution eliminating the barriers to removing excess gravel from the Nooksack River

*Donovan* reported for the Natural Resources Committee, noted that this item is a substitute, and *moved* that the item be tabled.

Councilmembers discussed the motion.

**Donovan's motion that the Resolution be tabled and ~~HELD IN COMMITTEE~~ carried by the following vote:**

Aye: 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Absent: 0

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

2. [AB2021-616](#) Resolution adopting the Whatcom County Natural Hazards Mitigation Plan

**Browne reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: RES 2021-057

3. [AB2021-675](#) Resolution adopting the Whatcom County Multi-jurisdictional Natural Hazards Mitigation Plan (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

**Browne reported for the Finance and Administrative Services Committee and moved that the Resolution (FCZDBS) be APPROVED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: RES 2021-058

4. [AB2021-671](#) Ordinance Closing Sheriff's Records Management System Project Fund 344

**Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-086

5. [AB2021-673](#) Ordinance Establishing the Northwest Annex Redevelopment Fund and Establishing a Project Based Budget for the Northwest Annex Redevelopment Project

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED.

The following people answered questions:

- Rob Ney, Administrative Services Department Facilities
- Tyler Schroeder, Executive's Office

They answered whether a restaurant was included in the budget, whether staff has encountered any kind of alternate proposal or opposition to



moving along with this plan, and whether any consideration is being given to offering the existing building to interested groups so they can relocate it.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2021-087

6. [AB2021-679](#) Ordinance amending the 2021 Whatcom County Budget, request no. 18, in the amount of \$7,038,925

**Browne** reported for the Finance and Administrative Services Committee and **moved** that the Ordinance be ADOPTED.

Tyler Schroeder, Executive's Office, answered a question about the shuffle of funding between the Public Defender and County Clerk, what the \$1,068,925 from American Rescue Plan Act Funds (ARPA) are for and whether it is money that has already been spent.

Councilmembers discussed the motion.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: ORD 2021-088

7. [AB2021-681](#) Ordinance amending the 2022 Whatcom County Budget, request no. 3, in the amount of \$1,144,763

**Browne** reported for the Finance and Administrative Services Committee and **moved** that the Ordinance be ADOPTED.

Tyler Schroeder, Executive's Office, answered whether they are agreeing to keeping the isolation and quarantine facility open until March, and whether they are using empty rooms for those who have lost their homes.

Councilmembers discussed the motion.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 2 - Elenbaas, and Kershner

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: ORD 2021-089

8. [AB2021-683](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Opportunity Council to provide housing case management services in the amount of \$527,316 for a total amended contract amount of \$790,974

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Tyler Schroeder, Executive's Office, answered whether the Opportunity Council helped displaced people find homes during the recent flood event, and if the Health Department audits whether the Opportunity Council hits the stated targets with the allotted amount of money.

**Browne's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

9. [AB2021-716](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Commerce for less-than-lethal equipment, in the amount of \$69,884.00

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Interlocal be AUTHORIZED.

Councilmembers discussed the motion.

**Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

Absent: 0

Temp Absent: 1 - Byrd

10. [AB2021-719](#) Request authorization for the County Executive to enter into an interlocal agreement amendment between Whatcom County and Whatcom Conservation District for PIC Program support, in the amount of \$826,182 (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 discussed the motion.

**Browne's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Temp Absent: 1 - Byrd

11. [AB2021-721](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Whatcom Conservation District for farm planning services and financial assistance, in the amount of \$115,021 (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.

Gary Stoyka, Public Works Department, answered whether they are using County funds to supplement the Conservation District.

Councilmembers discussed the motion.

**Browne's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

Temp Absent: 1 - Byrd

12. [AB2021-724](#) Request authorization for the County Executive to enter into an interlocal agreement with the Department of Natural Resources for Nooksack River lidar topographic and

bathymetric mapping (Council acting as the Flood Control Zone District Board of Supervisors)

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract (FCZDBS) be AUTHORIZED.

Councilmembers discussed the motion.

**Browne's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

13. [AB2021-725](#) Request authorization for the County Executive to accept Midwest Employer Casualty renewal option 2 for insurance protection for the self-insured workers' compensation program in 2022

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

14. [AB2021-727](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham operating through the Bellingham Fire Department for administering a paramedic training program in the amount of \$865,478

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Interlocal be AUTHORIZED.

Mike Hilley, Emergency Medical Services (EMS) Manager, answered how many paramedics will get trained for this amount of money, whether we have a retention program that requires them to stay in Whatcom County once trained here, and whether this is retraining paramedics for lost positions because of the Mayor of the City of Bellingham's and the State's vaccine mandates.

Councilmembers discussed whether they should ask the City of Bellingham to pay for paramedic training because of vaccine mandates.

Elenbaas asked if he could move to amend the contract to rehire the people who left because of the mandate then fund this need accordingly for how many we need after that. There was not a formal motion.

The following people answered questions about what would need to happen if Elenbaas made that motion.

- Dana Brown-Davis, Clerk of the Council
- Tyler Schroeder, Executive's Office

Councilmembers and staff discussed whether this falls under the State mandate, whether there is a decision that the City of Bellingham is making that other jurisdictions in Whatcom County are not, and whether the City mandate is making a difference in this situation.

***Elenbaas moved*** to send this item to Governor Inslee's office for him to fund. The motion was seconded by Kershner.

Hilley answered how many of these positions are positions needed regardless of the vaccine mandates.

Councilmembers discussed the motion.

The motion failed by the following vote:

**Aye:** 2 - Kershner and Elenbaas

**Nay:** 4 - Browne, Buchanan, Donovan, and Frazey

**Out of the Meeting:** 1 - Byrd

Councilmembers and staff discussed the amount for the paramedic training and the main motion to approve.

**Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:**

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 2 - Elenbaas, and Kershner

**Absent:** 0

**Temp Absent:** 1 - Byrd

15. [AB2021-728](#) Ordinance requesting that the Whatcom County Auditor include the question of

establishing a Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay on the ballot at the February special election

**Browne** reported for the Finance and Administrative Services Committee and **moved** that the Ordinance be ADOPTED.

Dana Brown-Davis, Clerk of the Council, answered whether there is anything else on the February ballot except for this library since elections carry a high cost.

Councilmembers discussed why it needs to be scheduled for February.

The following people also spoke:

- Tyler Schroeder, Executive's Office
- Christine Perkins, Whatcom County Library System Executive Director

Perkins answered a question about the estimated cost of the election and how many registered voters there are in the area and explained why the item was scheduled to be on a February ballot.

**Browne's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: ORD 2021-090

16. [AB2021-729](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Fire Protection District No. 7 for reimbursement of wages and benefits for 3 paramedic students in an amount of \$375,033

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

**Temp Absent:** 1 - Byrd

17. [AB2021-730](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and North Whatcom Fire and Rescue to reimburse the wages and benefits of 1 paramedic student in the amount of \$120,275

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

**Temp Absent:** 1 - Byrd

18. [AB2021-731](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham working through the Bellingham Fire Department for reimbursement of personnel costs associated with the hiring of up to six department lateral employees in the amount of \$364,116

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Interlocal be AUTHORIZED.

Mike Hilley, Emergency Medical Services (EMS) Manager, answered why there are different ordinances on this topic and how many people they are funding.

Councilmembers discussed the interlocal agreement.

**Browne's motion that the Interlocal be AUTHORIZED carried by the following vote:**

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 1 - Kershner

**Absent:** 0

**Abstain:** 1 - Elenbaas

**Temp Absent:** 1 - Byrd

19. [AB2021-734](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and Opportunity Council for providing a 5,000 square foot child care facility located in a qualified census tract in the amount of \$1,000,000

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Tyler Schroeder, Executive's Office, answered whether the County had already funded the Opportunity Council for this center.

Councilmembers discussed whether children who come to these facilities will be required to be vaccinated with the COVID-19 vaccine.

***Kershner moved*** all contracts, all money, all interlocal agreements going forward from Whatcom County should include a statement that there will be, under no circumstances, anybody mandated to take this vaccine in order to accept money from the County. The motion was seconded by Elenbaas.

Councilmembers discussed the motion.

***Kershner withdrew*** her motion because it was out of order at this point in the meeting.

Elenbaas stated he would like to revisit the non-discrimination clause.

Browne's motion that the Contract be AUTHORIZED carried by the following vote:

**Aye:** 5 - Frazey, Kershner, Browne, Buchanan, and Donovan

**Nay:** 1 - Elenbaas

**Out of the meeting:** 1 - Byrd

Elenbaas stated he would like to vote on the item again.

***Buchanan moved*** to reconsider. The motion was seconded by Browne.

The motion to reconsider carried by the following vote:

**Aye:** 6 - Kershner, Browne, Buchanan, Donovan, Elenbaas, and Frazey

**Nay:** 0

**Out of the meeting:** 1 - Byrd

**Kershner moved and Donovan seconded that the Contract be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

20. [AB2021-735](#) Request authorization for the County Executive to enter into an agreement between



Whatcom County and Opportunity Council for the development of affordable housing for low-income households in Whatcom County in the amount of \$3,000,000

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the SUBSTITUTE Contract be AUTHORIZED.

Dana Brown-Davis, Clerk of the Council, stated that this is a substitute.

Tyler Schroeder, Executive's Office, answered what is different between the substitute and the original.

Councilmembers discussed the motion and getting more information from the Opportunity Council about LLCs.

**Browne's motion that the SUBSTITUTE Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

21. [AB2021-736](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Fire Protection District No. 7 to reimburse the District for training costs associated with lateral hires in the amount of \$121,372

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Elenbaas

**Temp Absent:** 1 - Byrd

22. [AB2021-737](#) Request authorization for the County Executive to enter into a 9-year agreement between Whatcom County and Pictometry International Corporation for three oblique and orthogonal aerial imagery flights of western Whatcom County, in the amount of \$489,600

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract be AUTHORIZED.

Councilmembers discussed the motion.

Perry Rice, Administrative Services Information Technology Manager, answered what the aerial photographs are used for and what they are doing for our Information Technology department.

**Browne's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

23. [AB2021-738](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Allison Hunt, M.D. for fulfilling the duties of Whatcom County Medical Examiner in the amount of \$1,838,739  
NOTE: A substitute contract was authorized by Councilmembers with a revised amount of \$2,463,153 for an additional year of service.

**Browne** reported for the Finance and Administrative Services Committee and ***moved*** that the SUBSTITUTE Contract be AUTHORIZED.

Buchanan stated this is a substitute and Councilmembers discussed the difference between the two versions.

Tyler Schroeder, Executive's Office, answered what the amount of money includes, who the Medical Examiner reports to, who a family member of the diseased can go to if there is an issue, and how this contract is the same as the contract for the former Medical Examiner.

**Browne's motion that the SUBSTITUTE Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

24. [AB2021-740](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Northwest Regional Council for nursing services in the jail in the amended amount of \$85,816.00 for a total contract amount of \$1,500,790.00

**Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

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

25. [AB2021-713](#) Resolution in the matter of considering vacating an unnamed alley within the Plat of Lummi Park on Lummi Island

**Frazey reported for the Public Works and Health Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: RES 2021-059

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

1. [AB2021-704](#) Request Council appointment of Eli Wainman to the Stakeholder Advisory Committee for the Justice Project
- Browne moved*** and Kershner seconded that the applicant be APPOINTED.

Councilmembers asked if the applicant was present but the applicant was not present.

**Browne's motion that the Council Appointment be APPOINTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

### **SPECIAL COUNCIL ONLY ITEM**

1. [AB2021-678](#) Approval of standing Special County Council meeting dates for 2022  
***Donovan moved*** and Frazey seconded that the Special Council Only Item be APPROVED BY THE COUNCILMEMBERS.

Councilmembers discussed the motion, whether the meeting dates can be put on Councilmembers calendars, and whether they are going to do a Council retreat.

**Donovan's motion that the Special Council Only Item be APPROVED BY THE COUNCILMEMBERS carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

2. [AB2021-745](#) Appointment of members to serve on pro and con statement writing committees for a proposed ballot measure to establish a Birch Bay Library Capital Facility Area  
***Donovan moved*** and Frazey seconded that the applicants be APPOINTED.

Councilmembers and Dana Brown-Davis, Clerk of the Council, discussed that there was an updated list and there are three names on each side. Brown-Davis read the names into the record.

**Donovan's motion that the Applicants be APPOINTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

### **ITEMS ADDED BY REVISION**

1. [AB2021-747](#) Resolution to amend Resolution 2021-046 changing the dates of the CEDS report to 2022-2026  
***Browne moved*** and Donovan seconded that the Resolution be APPROVED.

Councilmembers discussed that these added items were added to the Finance and Administrative Services Committee and Browne reported for the committee.

Tyler Schroeder, Executive's Office, answered whether it was being pushed back one year.

**Browne's motion that the Resolution be APPROVED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: RES 2021-060

2. [AB2021-748](#) Request approval for the County Executive to award Bid #21-05 and enter into a contract between Whatcom County and Andgar Corporation for the 3rd Floor Judges' Chambers HVAC project, in the amount \$112,281.60

**Browne reported for the Finance and Administrative Services Committee and moved that the Bid Award be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

3. [AB2021-749](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Department of Social and Health Services for DSHS to reimburse for Court Commissioner's Service

**Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

## **INTRODUCTION ITEMS**

*Elenbaas* stated the recommendation from the Planning and Development Committee was to hold AB2021-606 in committee and *moved* to introduce items two and three. The motion was seconded by Browne (see votes on

individual items below).

1. [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

**This agenda item was WITHDRAWN.**

2. [AB2021-664](#) Ordinance establishing a speed limit on a portion of Alderson Road

**Elenbaas moved and Browne seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

3. [AB2021-715](#) Ordinance granting Zayo Group, LLC, a franchise for the provision of telecommunications services

**Elenbaas moved and Browne seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

Enactment No: ORD 2022-001

## **COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

***Donovan moved*** to authorize the County Executive to move forward with and complete the acquisition of the property and continue to lease the project, as discussed in Executive Session, to the current tenants as long as the purchase price of the property does not exceed the amount in Executive Session. The motion was seconded by Kershner.

Councilmembers discussed the motion.

The motion carried by the following vote:

**Aye:** 5 - Kershner, Browne, Buchanan, Donovan, and Frazey

**Nay:** 1- Elenbaas

**Out of the Meeting:** 1 - Byrd

Councilmembers continued to give Committee Reports.

Tyler Schroeder, Executive's Office, spoke about AB2021-693 (Discussion with Council regarding development of new EDI funded Workforce Housing program) and stated there was a motion this morning to approve the guidelines.

**Browne** reported for the Finance and Administrative Services Committee item AB2021-693 and **moved** to approve the guidelines for the Whatcom County EDI infrastructure improvements for Affordable Workforce Housing Program. This approval recognizes that the EDI board will be reviewing project specific proposals from developers using the guidelines as a framework. It is further recognized that the EDI Board can recommend approval of projects and modify the guidelines if the overall project aligns with the eligible use of the Fund and intent of the program. The motion was seconded by Donovan.

Councilmembers discussed the motion.

The motion carried by the following vote:

**Aye:** 6 - Browne, Buchanan, Donovan, Elenbaas, Frazey, and Kershner

**Nay:** 0

**Out of the meeting:** 1 - Byrd

Councilmembers continued committee reports.

**Buchanan moved** that the Incarceration Prevention and Reduction Task Force take on the Whatcom Public Health, Safety and Justice Initiatives into their workplan for 2022. The motion was seconded by Donovan.

The motion carried by the following vote:

**Aye:** 6 - Buchanan, Donovan, Elenbaas, Frazey, Kershner, and Browne

**Nay:** 0

**Out of the Meeting:** 1 - Byrd

Councilmembers continued reports and discussed letters that Frazey received from 7th grade students with issues they are concerned about and whether the Council is ok with her responding to them.

**Donovan moved** and Buchanan seconded that Frazey respond to all the

letters.

Councilmembers discussed whether each of them should respond to some letters so that one person is not doing them all.

The motion carried by the following vote:

**Aye:** 6 - Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan

**Nay:** 0

**Out of the Meeting:** 1 - Byrd

Councilmembers said final goodbyes to Councilmember Browne since this is his last Council meeting and acknowledged that today is Pearl Harbor Day.

## **ADJOURN**

The meeting adjourned at 10:55 p.m.

The County Council approved these minutes on January 11, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

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

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

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE





# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2022-009

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<b>File ID:</b>	MIN2022-009	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Committee of the Whole for January 25, 2022

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

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**Attachments:** Draft Minutes Committee of the Whole Jan 25 2022

# **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, January 25, 2022**

**3:10 PM**

**Virtual Meeting**

**VIRTUAL MEETING - ADJOURNS BY 4:45 P.M. (TO PARTICIPATE, SEE  
INSTRUCTIONS AT [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL  
360.778.5010)**

### **COUNCILMEMBERS**

Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kaylee Galloway  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

Council Chair Todd Donovan called the meeting to order at 3:10 p.m. in a virtual meeting.

**Roll Call**

**Present:** 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, Kaylee Galloway, and Kathy Kershner

**Absent:** None

**Announcements****Special Presentation**

1. [AB2022-064](#) Report on transitioning GRACE/LEAD to the Health Department.

The following people presented and answered questions:

- Dean Wight, Health Department
- Erika Lautenbach, Health Department Director
- Daniel Hammill, Bellingham City Council
- Rachel Lucy, Peach Health St. Joseph Medical Center
- Eric Richey, Whatcom County Prosecuting Attorney
- Mike Hilley, Emergency Medical Services (EMS) Manager
- Kathleen Roy, Health Department

They answered whether they have an estimate of how much costs would increase for the County, how much the programs were costing when the County was contracting them, whether they anticipate cost expenses to be reduced in any other areas of the County budget that might offset the increase in costs for this work, how much of the \$2.6 million overall program budget will be covered by other funding sources, how much the cost of the programs have increased on average each year over the last five years, the anticipated year over year increase if it is internalized, whether the current vendor is not capable of billing Medicaid, whether paying more to the contractor within the contract would create the incentive necessary for them to set up the appropriate billing structures, whether there would be specific cost savings that the County would only receive by internalizing the programs, the plan for staffing the programs going forward, whether the \$650,00 program cost increase includes the systems manager position discussed earlier, and what the time constraints are for this transition.

**This agenda item was REPORTED.**

**Committee Discussion and Recommendation to Council**

1. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County
- Frazey* briefed the Councilmembers and *moved* to recommend approval of the “Revised Resolution for 1.25.2022 Agenda” as a recommendation to use the American Rescue Plan Act (ARPA) funds. The motion was seconded by Galloway.

Frazey answered how this revised Resolution is different than what has been looked at in the past.

The following people discussed the item with the Councilmembers.

- Dana Brown-Davis, Clerk of the Council
- Tyler Schroeder, Executive's Office
- Allison Williams, Health Department

Councilmembers and the speakers discussed whether the Resolution was voted on in the past, whether the proposed amount of \$22.25 million of American Rescue Plan Act (ARPA) funds for these priorities would be consistent with percentages of that fund previously discussed, the priorities listed in Exhibit A, how the County can make zoning more inclusive to require that new developments include a childcare or family service center, whether they should take the budget items for 2022 (the investment for capital facilities and the investment in workforce development) to the Child and Family Well-Being Task Force and develop some plans to implement those dollars, whether the revised Resolution was included in the Council packet, recognizing the work and recommendations of the task force and whether it should be sent back to the task force, whether the priorities listed in the Exhibit should be amended, whether the Resolution should be amended to include what has been pre-determined by Council to be the ARPA allocation amounts, and using language that uses Exhibit A as a guiding document and not a binding document.

Galloway began to make a motion to amend the Resolution as follows:

NOW THEREFORE BE IT RESOLVED that the funds received through ARPA in the amounts of \$5.5 million for child care; \$3.5 million to support construction of previously determined capital investment projects and \$2 million to support the child care workforce be allocated to permanent solutions using Exhibit A as guidance.

Councilmembers concurred to sort out the language before tonight's meeting and continued to discuss the Resolution.

*Frazey withdrew* her motion.

**This agenda item was FORWARDED TO COUNCIL WITHOUT A RECOMMENDATION.**

### **Special Order of Business**

1. [AB2022-063](#) Letter to Commissioner of Public Lands and Washington State Board of Natural Resources regarding proposed Bessie Sorts Timber Sale  
  
Galloway updated the Councilmembers and they discussed the item with the following people:

- Michael Feerer, Whatcom Million Trees Project
- Chris Elder, Public Works Department
- Gary Stoyka, Public Works Department

They discussed the differences between the first and subsequent letters and what the Council's ask is, an email sent by Elder to Council regarding "Additional information re: AB2022-063," whether the forest industry is asking the Council to pause the sale, where the recommendation to pause is coming from, the age of the trees as reported by the Department of Natural Resources, where the proposed area is located, and whether the proposed letter is time sensitive.

Councilmembers concurred they would return to the discussion at tonight's Council meeting.

**This agenda item was DISCUSSED.**

### **Items Added by Revision**

There were no agenda items added by revision.

### **Other Business**

There was no other business.

### **Adjournment**

The meeting adjourned at 4:47 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

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

\_\_\_\_\_  
Todd Donovan, 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: MIN2022-010

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<b>File ID:</b>	MIN2022-010	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/31/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Regular County Council for January 25, 2022

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Council Jan 25 2022

# **Whatcom County Council**

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



## **Minutes - Draft Minutes**

**Tuesday, January 25, 2022**

**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); AGENDA  
REVISED 1.25.2022**

### **COUNCILMEMBERS**

Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kaylee Galloway  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.



## COUNTY COUNCIL

### CALL TO ORDER

Council Chair Todd Donovan called the meeting to order at 6 p.m. in a virtual meeting.

### ROLL CALL

**Present:** 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, Kaylee Galloway, and Kathy Kershner

**Absent:** None

### FLAG SALUTE

### ANNOUNCEMENTS

The Council is accepting applications to fill vacancies on the Board of Equalization. Applicants must be registered voters and live in Council District 3 or 5. The Board of Equalization hears property tax appeals and complaints regarding the Assessor's property value determination. Hearings are on Wednesdays and Thursdays. If you are interested and meet these 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 did not have a report.

### MINUTES CONSENT

***Buchanan moved*** to accept the minutes consent items. The motion was seconded by Frazey (see votes on individual items below).

1. [MIN2022-005](#) Special Council for January 11, 2022

**Buchanan moved and Frazey seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

2. [MIN2022-006](#) Regular County Council for January 11, 2022

**Buchanan moved and Frazey seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

Nay: 0

Absent: 0

3. [MIN2022-007](#) Water Work Session for January 18, 2022

**Buchanan moved and Frazey seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

### **PUBLIC HEARING**

1. [AB2021-664](#) Ordinance establishing a speed limit on a portion of Alderson Road

Donovan opened the Public Hearing and, hearing no one, closed the Public Hearing.

***Byrd moved*** and Buchanan seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Jim Karcher, Public Works Department, briefed the Councilmembers and answered whether this area is where the County was doing some maneuvering with the golf cart zone.

**Byrd's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2022-002

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

Council staff played a short instructional video about how to speak at the meeting.

The following people spoke:

- Rob Lewis
- Michael Feerer
- Todd Lagestee

- Alexandra Williams
- Alexander Harris
- Sarah Gardam
- Megan Wiseman
- Richard Tran
- Wendy Harris
- Shean Halley
- Misty Flowers
- Jean Purcell
- Sara Rose
- Jennifer Durant
- Robert Bystrom
- Ken Domorod
- Judith Akin
- Fran Isbell
- Craig Robinson
- Andie Ward
- Natalie Chavez
- Hannah Ordos
- Nancy Bergman
- Karla Rae
- Skip Hamilton
- Lynnette Allen

Byrd spoke to Michael Feerer and requested he send the remainder of his comments to the Council and he also spoke to those who had comments about masking and vaccines.

Hearing no one else, Donovan closed the Open Session.

Councilmembers took a five-minute break.

### **CONSENT AGENDA Part 1**

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

*Byrd* reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda items 1-14.

*Kershner moved* to remove AB2022-051 and AB2022-056 (Agenda item numbers 7 and 10) from the Consent Agenda based on open session comments and an email received. The motion was seconded by Byrd.

The motion carried by the following vote:

**Aye:** 7 - Frazey, Galloway, Kershner, Buchanan, Byrd, Donovan, and Elenbaas

**Nay:** 0

Councilmembers voted on Consent Agenda Items 1-6, 8-9, and 11-14 (see votes on individual items below).

1. [AB2022-030](#) Resolution cancelling uncollectible personal property taxes

**Byrd reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2022-002

2. [AB2022-034](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Kittitas County for jail services when extra housing is needed for Whatcom County Jail inmates

**Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

3. [AB2022-043](#) Request Authorization for the County Executive to enter into a contract between Whatcom County and the Washington State Office of Public Defense for the enhancement of Public Defense in the amount of \$209,111.00

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

4. [AB2022-045](#) Resolution to approve annual petition for refunds paid list consistent with RCW

84.69.020

**Byrd reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2022-003

5. [AB2022-046](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Military Department to prepare for all hazards through Emergency Management programs, in the amount of \$74,247

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

6. [AB2022-047](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Military Department to prepare for all hazards through Emergency Management programs, in the amount of \$25,325

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

7. [AB2022-051](#) Request authorizaition for the County Executive to enter into an agreement between Whatcom County and the Washington State Department of Natural Resources in the amount of \$9,900.00

This item was considered separately. See motion and vote below.

8. [AB2022-052](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lifeline Connections to provide jail behavioral health and re-entry services in the amount of \$604,882 for a total amended contract amount

of \$669,322

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

9. [AB2022-053](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Washington State Department of Ecology, in the amount of \$1,295,000

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

10. [AB2022-056](#) Request authorization for the County Executive to enter into an interlocal agreement with the City of Bellingham for Joint Usage of the Vactor Waste Transfer Facility

This item was considered separately. See motion and vote below.

11. [AB2022-057](#) Request authorization for the County Executive to enter in to a contract with GeoTest Services, Inc. for on-call Construction Materials Testing and Inspection Construction Services in an amount not to exceed \$150,000

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

12. [AB2022-058](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Lydia Place to provide emergency housing for families experiencing unsheltered homelessness in the amount of \$107,000 for a total amended contract amount of \$600,074

**Byrd reported for the Finance and Administrative Services Committee and**

**moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

13. [AB2022-059](#) Request authorization for the County Executive to enter into a collective bargaining agreement between Whatcom County and the Fraternal Order of Police for the period of January 1, 2022 - December 31, 2024

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

14. [AB2022-060](#) Request authorization for the County Executive to enter into a Collective Bargaining Agreement between Whatcom County and PROTEC17 for the period of January 1, 2022 - December 31, 2023

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

### **OTHER ITEMS Part 1**

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

1. [AB2022-012](#) Ordinance establishing the Geneva Bioretention Pilot Project Fund and establishing a project based budget for the Geneva Bioretention Pilot Project

***Byrd*** reported for the Finance and Administrative Services Committee and ***moved*** that the Ordinance be ADOPTED.

Frazey asked and Dana Brown-Davis, Clerk of the Council, answered whether they should go in the order of the agenda and go back to the remaining items that were removed from the Consent Agenda.

*Byrd withdrew* his motion.

Enactment No: ORD 2022-003

See action on this item below.

## **CONSENT AGENDA (Items Removed from Consent) Part 2**

(From Council Finance and Administrative Services Committee)

7. [AB2022-051](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and the Washington State Department of Natural Resources in the amount of \$9,900.00

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Agreement be AUTHORIZED.

Jon Hutchings, Public Works Department Director, answered whether this project is experimental and dangerous and stated maybe the best thing to do here is to ask that we just hold this until next meeting at which time we can bring up in the Natural Resources Committee the people who are running that program and they can answer those questions more directly about the implications if it suits the Council. He answered who is licensed to do aquatic application of herbicide.

*Byrd moved* to hold the item. The motion was seconded by Buchanan.

Councilmembers discussed the motion, what committee the item should go to if it was held, and why it has to be approved by the Council since it does not exceed the \$40,000 threshold.

The motion failed by the following vote:

**Aye:** 1 - Donovan

**Nay:** 6 - Kershner, Buchanan, Byrd, Elenbaas, Frazey, and Galloway

**Byrd's motion that the Agreement be AUTHORIZED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

10. [AB2022-056](#) Request authorization for the County Executive to enter into an interlocal agreement with the City of Bellingham for Joint Usage of the Vactor Waste Transfer Facility



*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Interlocal be AUTHORIZED.

Councilmembers discussed why this item was pulled from the Consent Agenda.

Jon Hutchings, Public Works Department Director, stated he would reach out to the constituent who asked what we do with the waste we collect, and he answered what the current controversy is regarding how the City of Bellingham is attempting to manage the waste water sludge.

**Byrd's motion that the Interlocal be AUTHORIZED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

## **OTHER ITEMS Part 2**

(From Council Finance and Administrative Services Committee)

1. [AB2022-012](#) Ordinance establishing the Geneva Bioretention Pilot Project Fund and establishing a project based budget for the Geneva Bioretention Pilot Project

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Ordinance be ADOPTED.

Jon Hutchings, Public Works Department Director, answered whether any funding for this is coming out of the Behavioral Health Program Fund.

**Byrd's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2022-003

2. [AB2022-013](#) Ordinance amending the 2022 Whatcom County Budget, request no. 4, in the amount of \$1,619,951

Byrd reported for the Finance and Administrative Services Committee and stated the committee has held this item in committee for further information until our next meeting.

*Frazey moved* that the Ordinance be ADOPTED. The motion was seconded by Galloway.

Councilmembers discussed the motion and the following people answered questions:

- Erika Lautenbach, Health Department Director
- Tyler Schroeder, Executive's Office

Schroeder walked through the background of the Ordinance.

Lautenbach answered whether this Ordinance is independent of the full transition or a pre-cursor, and whether there would be a disruption of services if this was not adopted tonight.

**Frazey's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 4 - Buchanan, Donovan, Frazey, and Galloway

**Nay:** 2 - Byrd, and Elenbaas

**Absent:** 0

**Abstain:** 1 - Kershner

Enactment No: ORD 2022-004

3. [AB2022-044](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Ideal Options for Physician Services in the amount of \$277,842.00

**Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

4. [AB2022-049](#) Request authorization for the County Executive to enter into a Memorandum of Understanding for the Way Station

**Byrd** reported for the Finance and Administrative Services Committee and ***moved*** that the Memorandum of Agreement be AUTHORIZED.

Councilmembers discussed why Byrd abstained on this item in committee

and discussed the item.

**Byrd's motion that the Memorandum of Agreement be AUTHORIZED carried by the following vote:**

**Aye:** 5 - Buchanan, Donovan, Frazey, Galloway, and Kershner

**Nay:** 2 - Byrd, and Elenbaas

**Absent:** 0

5. [AB2022-050](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Pacific Security to provide security services at COVID isolation and quarantine facilities and community vaccine clinics in the amount of \$48,201 for a total amended contract amount of \$224,210

*Byrd* reported for the Finance and Administrative Services Committee and stated it was recommended not to be approved and Councilmembers discussed the action taken in Committee. He ***moved*** to not pass the item.

*Frazey moved* and Galloway seconded that the Contract be AUTHORIZED.

Councilmembers discussed the concerns that were expressed in the Finance Committee and the following people answered questions:

- Erika Lautenbach, Health Department Director
- Tyler Schroeder, Executive's Office

Lautenbach answered questions about whether there is any retroactive payment, and the money that is going toward paying for a car.

Schroeder spoke about the scope of work of this contract and one previously approved.

*Byrd withdrew* his original motion not to pass and left it as a recommendation.

**Frazey's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Buchanan, Byrd, Donovan, Frazey, Galloway, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

6. [AB2022-055](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Whatcom Conservation District, in the

amount of \$35,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

**Byrd** reported for the Finance and Administrative Services Committee and ***moved*** that the Contract (FCZDBS) be AUTHORIZED.

Councilmembers voted on the item (see below) and Elenbaas spoke about the item.

**Byrd's motion that the Contract (FCZDBS) be AUTHORIZED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

**(From Council Planning and Development Committee)**

7. [AB2021-744](#) Resolution approving recommendations on three applications for Open Space Current Use Assessment

**Elenbaas** reported for the Planning and Development Committee and ***moved*** that the Resolution be APPROVED.

Councilmembers discussed why the two applicants were kept in that were not recommended by the Planning and Development Services Department staff and OSP2020-00004 for which staff did not recommend approval and the Planning Commission made no recommendation.

**Elenbaas's motion that the Resolution be APPROVED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2022-004

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

8. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County

**Frazey moved** and Buchanan seconded that the "Revised Resolution as Revised on 1.25.2022" on the Legislative Information Center be APPROVED.

Councilmembers discussed the version being considered and whether this is

an amendment or a substitute Resolution.

Dana Brown-Davis, Clerk of the Council, requested that they move to approve the substitute version as revised on January 25, 2022.

***Frazey restated*** her motion to approve the SUBSTITUTE Resolution from today (January 25, 2022). The motion was seconded by Buchanan.

Kershner spoke about being careful not to allocate the money for things that do not last.

Galloway asked about a scrivener's error in the Resolution.

**Frazey's motion that the SUBSTITUTE Resolution be APPROVED carried by the following vote:**

**Aye:** 6 - Buchanan, Byrd, Donovan, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Elenbaas

Enactment No: RES 2022-005

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

1. [AB2022-026](#) Council appointment to fill vacancies on the Incarceration Prevention and Reduction Task Force - Applicant(s): Jason McGill, Jason Smith, Jenn Lockwood, Gregory Todd Lagestee, Heather Flaherty, Deborah Hawley, McKale Jones, Debra David  
Jill Nixon, Council Office staff, spoke about a suggested process.

***Buchanan moved*** and Byrd seconded to nominate both applicants for the Consumer of services or family member position.

Councilmembers discussed the motion and voted as follows:

**Deborah Hawley, incumbent:** 6 - Frazey, Galloway, Kershner, Buchanan, Byrd, and Donovan

**Debra David:** 1 - Elenbaas

Appointed: **Deborah Hawley**

***Kershner moved*** and Buchanan seconded to nominate the four remaining applicants for the Concerned Citizen position.

Councilmembers discussed the motion and voted as follows:

**Heather Flaherty, incumbent:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**McKale Jones:** 0

**Gregory Todd Lagestee:** 0

**Debra David:** 0

Appointed: **Heather Flaherty**

Kershner moved and Buchanan seconded to nominate all four applicants for the Social Services Provider position.

Councilmembers discussed the motion and each voted for two applicants as follows:

**Jason McGill:** 5 - Buchanan, Byrd, Frazey, Galloway, and Kershner

**Jason Smith:** 2 - Byrd, and Elenbaas

**Jenn Lockwood:** 4 - Donovan, Elenbaas, Frazey, and Kershner

**Gregory Todd Lagestee:** 3 - Buchanan, Donovan, and Galloway

Appointed: **Jason McGill and Jenn Lockwood**

**This agenda item was APPOINTED.**

2. [AB2022-054](#) Council appointment to the Flood Control Zone District Advisory Committee - Alternate, applicant(s): Loren Hoekema (Council Acting as the Flood Control Zone District Board of Supervisors )

***Elenbaas moved*** and Frazey seconded that the Council Appointment be APPOINTED.

Elenbaas commented on the motion.

**Elenbaas's motion that the Council Appointment be APPOINTED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

3. [AB2022-068](#) Council appointment to fill vacancies on the Forestry Advisory Committee, Harvester position - Applicant(s): Matt McGee

**Buchanan moved and Byrd seconded that the Council Appointment be APPOINTED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

4. [AB2022-069](#) Council appointment to fill vacancy on the Lynden/Everson Flood Control Subzone Advisory Committee - Applicant(s): Shawna DeKriek (Council Acting as the Flood Control Zone District Board of Supervisors)

***Kershner moved*** and Frazey seconded that the Council Appointment be APPOINTED.

Elenbaas commented on the motion.

**Kershner's motion that the Council Appointment be APPOINTED carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

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

1. [AB2022-061](#) Request confirmation of the County Executive's appointments and reappointments to various county boards, committees and commissions

Dana Brown-Davis, Clerk of the Council, stated there is a substitute summary and a substitute packet of applications ("Substitute Applications A 1.24.2022").

**Galloway moved and Frazey seconded that the SUBSTITUTE Executive Appointment be CONFIRMED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

#### **ITEMS ADDED BY REVISION**

1. [AB2022-079](#) Ordinance amending Whatcom County Code 2.02.085, Council Standing Committees - Committee Action
- Councilmembers and Council staff discussed the order of considering this item in the agenda.

**Galloway moved** to add AB2022-063 to the agenda ***then withdrew*** her

motion since these are introduction items.

Councilmembers discussed when to talk about AB2022-063.

***Frazey moved*** and Galloway seconded that the Ordinance be INTRODUCED.

Councilmembers discussed the item.

**Frazey's motion that the Ordinance be INTRODUCED carried by the following vote:**

**Aye:** 6 - Buchanan, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Byrd

## **INTRODUCTION ITEMS**

***Buchanan moved*** to remove AB2021-606 from Introduction. The motion was seconded by Kershner.

The motion carried by the following vote:

**Aye:** 6 - Frazey, Galloway, Kershner, Buchanan, Donovan, and Elenbaas

**Nay:** 0

**Abstain:** 1 - Byrd

***Kershner moved*** to introduce items 1, 3, 4, 5, 6, and 7. The motion was seconded by Frazey.

Councilmembers and Council staff discussed how it is decided whether these items will be scheduled for a committee, and the origin of the ordinances. Councilmembers voted on the items (see votes on individual items below).

1. [AB2022-048](#) Ordinance authorizing Superior Court to appoint a statutory commissioner

**Kershner moved and Frazey seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

2. [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

**Buchanan moved and Kershner seconded that the Ordinance Requiring a Public Hearing be WITHDRAWN. The motion carried by the following vote:**

**Aye:** 6 - Buchanan, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

**Abstain:** 1 - Byrd

3. [AB2022-036](#) Ordinance repealing the Cherry Point Ferndale Subarea Plan and deleting a reference to the Subarea Plan in the Whatcom County Comprehensive Plan

**Kershner moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

4. [AB2022-039](#) Ordinance to temporarily close Gulf Road to Motorized Vehicular Traffic

**Kershner moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

5. [AB2022-040](#) Ordinance for the legal establishment of a speed limit for a portion of Nulle Road

**Kershner moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

6. [AB2022-041](#) Ordinance to install a stop sign on Northwest Drive

**Kershner moved and Frazey seconded that the Ordinance Requiring a Public**

**Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

7. [AB2022-042](#) Ordinance regarding the legal establishment of existing yield signs on county roads

**Kershner moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

**Absent:** 0

## **COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

Councilmembers gave committee reports.

**Galloway** spoke about AB2022-063 Letter to Commissioner of Public Lands and Washington State Board of Natural Resources regarding proposed Bessie Sorts Timber Sale and ***moved*** to approve the revised letter. The motion was seconded by Frazey.

Dana Brown-Davis, Clerk of the Council, clarified that this is the substitute letter.

The motion carried by the following vote:

**Aye:** 4 - Buchanan, Donovan, Frazey, and Galloway

**Nay:** 2 - Kershner and Elenbaas

**Abstain:** 1 - Byrd

Cathy Halka, Council Legislative Analyst, briefed the Councilmembers about the kick-off meeting for the COVID-19 pandemic response review contract on January 27, 2022.

Councilmembers discussed whether Councilmembers should be present at the kick-off meeting and the purpose of the meeting.

**Kershner moved** that she and one other Councilmember who wants to go will participate in this meeting. She suggested that Elenbaas be the other Councilmember. The motion was seconded by Byrd.

Councilmembers discussed the motion and Buchanan stated he would volunteer to join Kershner.

***Kershner revised*** her motion that she and Buchanan will participate in the meeting. The motion was seconded by Elenbaas.

Councilmembers discussed the motion, the agenda topics of the meeting, and other meeting options.

The following spoke about whether it would be an issue with quorum since Kershner and Buchanan are both on the Public Works and Health Committee:

- Dana Brown-Davis, Clerk of the Council
- Karen Frakes, Prosecuting Attorney's Office

***Kershner amended*** her motion that just she will participate in the meeting.

She stated she would report back to Council.

Councilmembers continued to discuss the motion.

The motion carried by the following vote:

**Aye:** 6 - Buchanan, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 1 - Byrd

Elenbaas spoke about and Councilmembers discussed trying to meet in person for at least a portion of their meetings.

***Kershner moved*** that they ask staff to give them an update at the next Committee of the Whole meeting on where we are with technology and any other issues regarding opening the Council Chambers in a hybrid capacity. The motion was seconded by Galloway.

Councilmembers discussed the motion.

Karen Frakes, Prosecuting Attorney's Office, stated she believes it is still the law that they have to have a hybrid component so the meetings would have to be hybrid meetings.

The motion carried by the following vote:

**Aye:** 7 - Byrd, Donovan, Elenbaas, Frazey, Galloway, Kershner, and

Buchanan

**Nay:** 0

Councilmembers gave other updates.

Motions were approved.

**ADJOURN**

The meeting adjourned at 10:27 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

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

\_\_\_\_\_  
Todd Donovan, 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: MIN2022-011

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<b>File ID:</b>	MIN2022-011	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	02/02/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Health Board for February 1, 2022

### 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 Health Board Feb 1 2022

# **Whatcom County Council as the Health Board**

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



## **Minutes - Draft Minutes**

**Tuesday, February 1, 2022  
10 AM  
Virtual Meeting**

**VIRTUAL MEETING - VIEW ONLINE**

### **COUNCILMEMBERS**

Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kaylee Galloway  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

Health Board Chair Todd Donovan called the meeting to order at 10 a.m. in a virtual meeting.

**Roll Call**

**Present:** 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas, Kaylee Galloway, and Kathy Kershner

**Absent:** None

**Announcements****Public Comment**

Donovan opened the public comment period and hearing no one, closed the open comment period.

**Public Health Advisory Board (PHAB) Update**

Steve Bennett, Public Health Advisory Board, updated the Councilmembers on the following:

- A new chair of the board
- The board's continued work on implementing the racism resolution requirements
- The continuing work of other task forces and boards

**Big Work 2022**

Erika Lautenbach, Health Department Director, updated the Councilmembers on the following three main categories of work for 2022 in the Health Department (strategic, operational, and work force):

**Strategic**

- Work on a COVID-19 Strategic Plan
- Re-engagement with the overall Strategic Plan at the Health Department
- Work on the Community Health Improvement Plan
- Staffing for the Child and Family Well-Being Task Force and providing data support for a ballot measure this fall
- A continuation of racial equity work in department operations and within boards and commissions
- The need to make changes to the Public Health Advisory Board structure and/or the Health Board membership composition
- A revision of the performance management system

Operational

- The receipt of a number of extensions for re-accreditation given the Health Department's work with COVID-19
- A plan to work with the Health Board as the Health Department engages in reorganization
- Re-envisioning how the Health Department does their work and supports employees with flexible and hybrid work options
- A need to move staff in order to make way for the construction project of the Way Station
- Work to develop updated data dashboards on various data they are tracking and the data modernization project to better track contracts, deliverables, and outcomes in the community
- Work on a website change
- Implementation of the Health Department's part of the EnerGov permitting system to streamline the permitting processes

Work Force

- Succession planning, mitigating for burnout, and learning and leadership development
- An update to the Workforce Development Plan
- Onboarding of permanent staff positions adopted in the budget and anticipated additional funding in 2022
- Integration of the GRACE/LEAD and crisis intervention teams into the Health Department

She answered where staff may be moved to make way for the Way Station construction, whether she could send this report to the Councilmembers, what EnerGov is, how much of the staffing was already included in the two year budget they approved a year before last, whether she has a document that lays out the funding for staffing, whether a ballot measure this fall would be an initiative or an ask for the Council to place it on the ballot, whether she has a sense of the timing for that, and what that funding would be used for.

**Health Board Composition**

Erika Lautenbach, Health Department Director, briefed the Councilmembers on legislative changes regarding the Health Board composition.

She answered a question about the specifics that are missing in looking at the Public Health Advisory Board (PHAB) bylaws and the Code in order to



meet what is required by the State law. She then outlined three options available to the Health Board:

Option 1: The Health Board could remain the County Council and the PHAB would make changes.

Option 2: The Health Board could adopt the State guidelines and the PHAB would remain the same.

Option 3a: Both the Health Board and the PHAB could change. If the Health Board decided to adopt the State guidelines that would give the opportunity to revise what the PHAB could look like and potentially more fit into a different body to create new value in a different way.

Option 3b: Both the Health Board and the PHAB could change. The County Council could pass legislation to change the makeup of the Health Board. They could adopt the State guidelines and move forward with those or do something in between and not adopt the State guidelines all the way.

Fraze stated that she was under the impression that they have to go by the State guidelines if they do any change.

Lautenbach stated her understanding is that Whatcom County does not have to change because you have an advisory body. You could, however, change all the way to meet the State guidelines or somewhere in between as long as you retain that community advisory body. But that said, if you do not go all the way to the State guidelines the community advisory needs to change in order to meet the Revised Code of Washington (RCW). That means you would create some role confusion. Option 2 and Option 3b above have some of the same role definition murkiness.

Councilmembers and Lautenbach discussed the options, having more time to work through them and maybe having a special meeting, waiting to get the report from the COVID-19 pandemic response review consultant in July, seeing what other counties are doing first, an update from the kick-off meeting for the COVID-19 pandemic response review, and where challenges exist in the current Health Board and what the opportunities might be if they change it.

Steve Bennett, Public Health Advisory Board, stated if the Health Board is going to research over the course of the next year to determine a course of action then PHAB is going to have to change while that occurs.

Councilmembers and Lautenbach continued to discuss the timing, whether the PHAB would come back to the Health Board with some more fleshed-out information about what the options would look like or whether they have to address the PHAB now, whether they would like Lautenbach to come back with policy options to consider, what changes to the Code or bylaws would require action by the Council or Health Board versus what can be done independent of that by the PHAB, and getting more information from legal regarding whether they have to go exactly by the State requirements if they change any part of the Health Board.

***Kershner moved*** that they ask Director Lautenbach to explore options and alternatives for what changes would need to be made on the PHAB to come into compliance with the State law and bring those back to them in March. The motion was seconded by Galloway.

Donovan stated he does not want to take off the table examining the composition of the Health Board.

***Kershner re-stated*** her motion to ask the Health Department Director Lautenbach to come back to Council as the Health Board (by March 29, 2022) with options to ensure that the PHAB is compliant with the new State law.

Councilmembers discussed whether the Health Board would hold back the PHAB from being State-compliant.

The motion carried by the following vote:

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Galloway, and Kershner

**Nay:** 0

***Donovan moved*** that they also get a recommendation and further information on option B where both the Health Board and PHAB would potentially change. The motion was seconded by Galloway.

Councilmembers discussed the motion.

***Donovan repeated*** the motion to receive information and recommendation for an option that would consider changing both the Health Board and PHAB and answered how his motion is different than the previous motion.

Karen Frakes, Prosecuting Attorney's Office, stated only if you are comprised solely of elected officials can you retain the Health Board as it

is. Otherwise, if you make changes, it appears to me that you have to comply with the new regulations. The new law doesn't go into effect until July of this year and even the current statute allows you to have different elected officials on your Health Board, not just county elected officials. So you might be able to make some changes, but Frazey's concerns are warranted.

Councilmembers and Frakes discussed whether legal should give them an opinion prior to the Health Department spending the time to come back with alternatives.

The motion carried by the following vote:

**Aye:** 6 - Byrd, Donovan, Frazey, Galloway, Kershner, and Buchanan

**Nay:** 1 - Elenbaas

Lautenbach stated they would move forward with an Ordinance for their review on March 29 or before for the PHAB and will work with legal and develop recommendations or options for their consideration.

### **COVID update**

The following people presented and answered questions:

- Erika Lautenbach, Health Department Director
- Greg Thompson, Co-Health Officer

They answered questions about the number of hospitalizations and whether hospitalization data is sorting for those who go into the hospital for other reasons and incidentally test positive for COVID-19, whether there is any data or information or campaign coming from the CDC, NIH, or FDA on the therapeutic Ivermectin, and whether we have data on how many people have gotten COVID-19 in our community and have not tested and/or reported.

### **Adjournment**

The meeting adjourned at 11:42 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

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

\_\_\_\_\_  
Todd Donovan, Health Board 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: AB2022-036

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<b>File ID:</b>	AB2022-036	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	01/05/2022	<b>Entered by:</b>			
<b>Department:</b>		<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

---

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

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

Ordinance repealing the Cherry Point Ferndale Subarea Plan and deleting a reference to the Subarea Plan in the Whatcom County Comprehensive Plan

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

Ordinance repealing the Cherry Point Ferndale Subarea Plan, which was adopted in 1981, and deleting a reference to the Subarea Plan in the Whatcom County Comprehensive Plan.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council

---

**Attachments:** Staff Memo, Draft Ordinance, Planning Commission Findings

**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius**  
Director

## Memorandum

January 5, 2022

To: The Honorable Satpal Sidhu, Whatcom County Executive  
The Honorable Whatcom County Council

From: Matt Aamot, Senior Planner

Through: Mark Personius, Director

RE: Repealing the Cherry Point Ferndale Subarea Plan and Making a  
Related Comprehensive Plan Amendment (PLN2018-00003)

The Growth Management Act (GMA) allows, but does not require, a county to adopt subarea plans under RCW 36.70A.080. However, the GMA also requires that subarea plans must be consistent with a county's comprehensive plan. Specifically, RCW 36.70A.080(2) states: "A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan."

The Cherry Point Ferndale Subarea Plan was adopted in 1981, some 40 years ago. Since that time, the GMA was adopted (1990) and the County adopted, and subsequently updated, a county-wide Comprehensive Plan.

Some of the comprehensive land use plan designations in the 1981 Cherry Point Ferndale Subarea Plan are not consistent with the designations in the Whatcom County Comprehensive Plan. Additionally, the requirement to designate urban growth areas (UGAs) was not enacted until after the Subarea Plan was adopted. The Subarea Plan has "Urban Reserve" designations, but they do not match the current UGA boundaries. The GMA's rural element requirements did not exist when the Subarea Plan was adopted and, therefore, were not addressed. The Subarea Plan utilized a 15-year planning period (which ended in 1996). The Subarea Plan contains policies that are inconsistent with the Whatcom County Comprehensive Plan. Therefore, Planning and Development Services recommends repealing the Subarea Plan and deleting a reference to the Subarea Plan in the Whatcom County Comprehensive Plan. Finally, we would note that the County has already repealed 6 subarea plans from the 1980s and 1990s within the past 8 years.

The Whatcom County Planning Commission also recommended repealing the Subarea Plan and deleting a reference to the Subarea Plan in the Comprehensive Plan on October 28, 2021.

Under the Growth Management Act, Comprehensive Plan amendments such as the subject proposal can only be adopted by the County Council at concurrent review. Therefore, we recommend that Council adopt a motion to forward this amendment to concurrent review and adopt the Ordinance with the other Comprehensive Plan amendments at concurrent review.

Thank you for your consideration of this matter. We look forward to discussing it with you.

PROPOSED BY: Planning & Development Services  
INTRODUCTION DATE: \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**REPEALING THE  
CHERRY POINT FERNDALE SUBAREA PLAN  
AND DELETING A REFERENCE TO THE SUBAREA PLAN IN THE  
WHATCOM COUNTY COMPREHENSIVE PLAN**

**WHEREAS,** The Whatcom County Planning Commission held public hearings and issued recommendations on the proposed amendments; and

**WHEREAS,** The County Council considered Planning Commission recommendations;

**WHEREAS,** The County Council held a public hearing; and

**WHEREAS,** The County Council hereby adopts the following findings of fact:

**FINDINGS OF FACT**

1. The subject amendments include:
  - a. Deleting text in the Whatcom County Comprehensive Plan relating to the Cherry Point Ferndale Subarea Plan.
  - b. Repealing the Cherry Point Ferndale Subarea Plan (1981).
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 3, 2018.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2018.
4. Notice of the Planning Commission hearings for the subject amendments was posted on the County website on June 26, 2018 and October 18, 2021.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018 and October 15, 2021.
6. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 3, 2018 and October 18, 2021.



7. The Planning Commission held public hearings on the subject amendments on July 12, 2018 and October 28, 2021.
8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must find all of the following:
  - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
  - b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
  - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
    - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
    - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
    - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
  - d. The amendment does not include or facilitate spot zoning.

### **Growth Management Act**

9. The Growth Management Act (GMA) allows, but does not require, a county to adopt subarea plans under RCW 36.70A.080 ("Comprehensive plans – Optional elements").
10. However, the GMA requires that subarea plans must be consistent with a county's comprehensive plan. Specifically, RCW 36.70A.080(2) states: "A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan."

11. The Cherry Point Ferndale Subarea Plan was adopted in 1981, prior to enactment of the GMA in 1990. The Whatcom County Comprehensive Plan was adopted in 1997 and subsequently amended from time to time.

### **County-Wide Planning Policies**

12. The County-Wide Planning Policies do not require the County to retain old subarea plans.

### **Interlocal Agreements**

13. There are no interlocal agreements relating to the Cherry Point Ferndale Subarea Plan.

### **Further Studies/Changed Conditions**

14. The GMA, adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs). The 1981 Cherry Point Ferndale Subarea Plan does not address UGAs.
15. The GMA was amended in 1997 to include criteria for limited areas of more intensive rural development (LAMIRDs). The 1981 Cherry Point Ferndale Subarea Plan does not address LAMIRDs.
16. The Whatcom County Comprehensive Plan utilizes a planning horizon of 2036. The 1981 Cherry Point Ferndale Subarea Plan utilized a 15-year planning period (which ended in 1996).
17. The Whatcom County Comprehensive Plan contains population projections through the year 2036. The 1981 Cherry Point Ferndale Subarea Plan contains population forecasts through the year 2000.
18. The 1981 Cherry Point Ferndale Subarea Plan contains density policies that are not consistent with the Whatcom County Zoning Code.
19. The 1981 Cherry Point Ferndale Subarea Plan is inconsistent with the Whatcom County Comprehensive Plan. Specifically, the Subarea Plan does not address UGAs, contains different land use designations, is inconsistent with the Comprehensive Plan's rural element, has a different planning period, and contains different population projections.
20. Changed conditions including enactment of the GMA, adoption of the Whatcom County Comprehensive Plan, and the passage of time warrant repealing the 1981 Cherry Point Ferndale Subarea Plan.

## Public Interest

21. Repealing the 1981 Cherry Point Ferndale Subarea Plan will serve the public interest by removing a plan that is inconsistent with the Whatcom County Comprehensive Plan. Removing a reference to the Subarea Plan in the Whatcom County Comprehensive Plan is consistent with repealing the Subarea Plan.

## Spot Zoning

22. The subject proposal does not involve rezoning property.

## CONCLUSION

The subject comprehensive plan amendments, which include repealing the Subarea Plan, are consistent with the approval criteria of WCC 22.10.060.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Whatcom County Comprehensive Plan amendments are hereby adopted as shown on Exhibit A.

Section 2. The Cherry Point Ferndale Subarea Plan is hereby repealed as shown on Exhibit B.

Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

\_\_\_\_\_  
, Chairperson

APPROVED as to form:

( ) Approved ( ) Denied

/s/ Royce Buckingham

\_\_\_\_\_  
Civil Deputy Prosecutor

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

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

## Exhibit A – Whatcom County Comprehensive Plan Amendments

---

### **Whatcom County Comprehensive Plan – Chapter 2**

Policy 2L-2:                Retain and periodically review the adopted Subarea Plans  
                                 (Lummi Island, ~~Cherry Point Ferndale~~, Urban Fringe, Birch Bay  
                                 Community Plan, Foothills, and Point Roberts). . .

*No changes to the remainder of this policy.*

<p>Rationale: The Cherry Point Ferndale Subarea Plan (1981) would be repealed. Therefore, the reference to this Subarea Plan would be removed from the Whatcom County Comprehensive Plan.</p>
---

## Exhibit B – Cherry Point Ferndale Subarea Plan Repeal

---

*Repeal the Cherry Point Ferndale Subarea Plan in its entirety (see attached).*

# **CHERRY POINT FERNDALE SUBAREA**

a component of the

## **Whatcom County Comprehensive Land Use Plan**

- Pt. Roberts Subarea
- Lummi Island Subarea
- **Cherry Pt. - Ferndale Subarea**
- Lake Whatcom Subarea
- Urban Fringe Subarea
- Lynden - Nooksack Valley Subarea
- Birch Bay - Blaine Subarea
- Chuckanut - Lake Samish Subarea
- South Fork Valley Subarea
- Foothills Subarea

# Repeal

## CHERRY POINT - FERNDALE SUBAREA

### COMPREHENSIVE PLAN

MAY, 1981

#### Whatcom County Council

Shirley Van Zanten  
Don Hansey  
Larry McIntyre  
C. J. Johnson

R. W. "Bob" Muenscher  
Jon Donnellan  
Will Roehl  
Jim Hawley

#### Whatcom County Planning Commission

John Vanderhage  
Al Hickinbotham  
Robert Andersen  
Bill Clement  
Emil deWilde

Louise Greer  
Jack E. Griffin  
Peggy Hinton  
Alvin Van Dalen  
Joe Elenbaas

#### Whatcom County Planning Staff

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William G. Trimm, Assistant Director  
Sharon Hayes, Administrative Secretary

#### Comprehensive Planning Section

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Sandy Palm, Planner I  
Michele Gierman, Graphics/Technical Assistant  
Karen Daniels, Typist

#### Operational Planning Section

Jon Holan, Senior Planner  
Roger Almskaar, Planner II  
Florence Nichols, Typist

# Repeal

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# Repeal

THE CHERRY POINT-FERNDAL SUBAREA COMPREHENSIVE PLAN  
A COMPONENT OF THE WHATCOM COUNTY COMPREHENSIVE PLAN

Adopted this 9<sup>th</sup> day of DECEMBER, 1980  
by the Whatcom County Planning Commission.

John Vanderhage 12-9-80  
John Vanderhage, Chairman  
Michael E. Nicholson  
Michael E. Nicholson, Secretary

Certified this 21<sup>st</sup> day of May, 1981  
by the Whatcom County Council

Shirley Van Zanten  
Shirley Van Zanten, Chairperson

Approved this 5<sup>th</sup> day of June, 1981  
by the Whatcom County Executive.

John Louws  
John Louws, Executive

Adopted this 5<sup>th</sup> day of June, 1981  
by the Boundary Review Board.

Dr. Elreco Barnett  
Dr. Elreco Barnett, Chairperson

Attest: Joan Ogden, County Auditor  
and ex-Officio Clerk of the County  
Council.

By: Carol Eberger  
Deputy

Repeal

introduction

# Repeal

## I. INTRODUCTION

### Statutory Authority

Statutory authority for county comprehensive land use planning is established in the Washington State Planning Enabling Act, in which it is stated that "each planning agency shall prepare a comprehensive plan for the orderly physical development of the county or any portion thereof..." (RCW 36.70.320). The Cherry Point-Ferndale Subarea Comprehensive Plan has been developed in response to statutory authority, as well as in recognition of the widely accepted principle that future Whatcom County land use decisions should be made in a coordinated and responsible manner by both the public and private sectors.

### Definition & Application

The Whatcom County Comprehensive Plan is defined as an official public document to be utilized by both the public and private sectors as a policy guideline for making orderly and desirable decisions concerning the future use of land in the county. The plan has been formulated by the Whatcom County Planning Commission and is comprehensive, general and long-range in nature. Comprehensive, in that it encompasses major geographic areas of the county and the functional elements that bear on physical development; general, in that it summarizes major policies and proposals and is not, by statute, a detailed regulation; and long-range, in that it not only addresses current issues, but also anticipated problems and possibilities of the future.

The purpose of this document is to foster a responsible process of land use decision-making. The goals, policies and land use plan map contained herein serve to amend the 1970 Whatcom County Comprehensive Plan for the geographic area covered by the Cherry Point-Ferndale Subarea. The 1970 plan served as a good and basic plan for the 1970's, but as times change, people's attitudes, technologies, and economies also change. Consequently, the primary decision-making document of local government must be revised to address current and anticipated issues of the future.

In consideration of the changes that have occurred since the existing plan was adopted, the Planning Commission resolved in December, 1978 to revise and update the 1970 Comprehensive Plan. The Commission is also aware that changes will continue through the 1980's and has realized that the policies contained herein will be subject to modification and revision over a period of time. As is discussed in the following section, this Subarea Plan will be revised on a five-year basis.

### Subarea Planning Concept

Because of the county's diverse physical and cultural make-up, the Planning Commission elected to revise the plan on an individual geographic area basis. Thus, the Commission divided the western one-third of the county into ten logical geographic areas where the planning process could be applied in a uniform and consistent manner. Denoted as "subareas," these geographic areas were delineated to address various land use related issues that appeared to be unique to particular areas of the county.

# Repeal

The criteria utilized by the Commission to delineate the subarea boundaries include natural and physical features; political subdivisions, such as special purpose districts (sewer, water, fire, school, etc.); existing land use patterns; and the presence of a city or town (where applicable) to act as a nucleus for the area. Thus, subareas are planning units determined through the application of criteria and considered as a practical means of revising the comprehensive plan in a consistent orderly fashion.

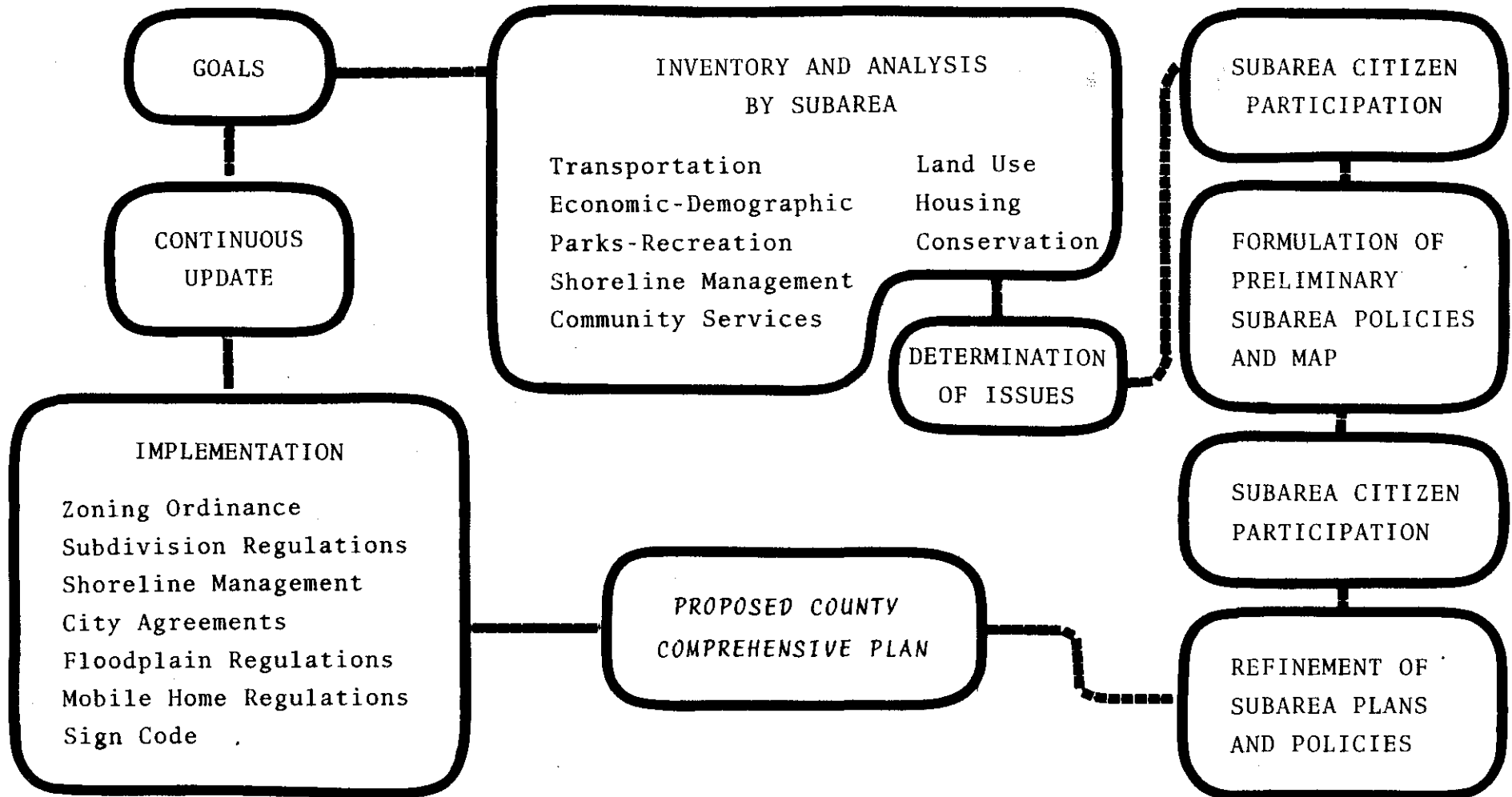
## Whatcom County Planning Process

The Whatcom County comprehensive planning process is defined as a continual program of evaluating goals, conducting various land-related studies, and then utilizing such goals and studies to fashion a balanced and practical set of land use policies and proposals for the future use of land in our county. Stated differently, the planning process serves as a blueprint for the logical development of the comprehensive plan, as well as the formulation of effective implementation tools.

The process describes, through a logical sequence, the various land use related factors that must be considered to effect the formulation of responsible and meaningful land use policies and proposals. These factors concern the following: the definition of county-wide goals; the inventory and analysis of land use, community facilities and utilities, and environmental resource characteristics; the forecasting of population levels and the county's economic vitality; the comprehension of issues, both technical and citizen related; the development of policies to resolve and/or address the relevant issues, and the transformation of policies into the plan map and attendant implementation tools.

The planning process is continual. It involves not only the formulation of the comprehensive plan document, its implementation through the application and use of various regulatory tools, but also continual monitoring and periodic updating. The success of the planning process in Whatcom County relies heavily upon the county's ability to keep the major components of the plan current. Thus, the plan should be updated every five years by the Planning Commission and such revisions should adhere to the various sequential stages of the planning process.

# whatcom county planning process



# Repeal

## Format

The Comprehensive Plan for the Cherry Point-Ferndale Subarea includes the necessary information for the appropriate formulation of land use decisions by both the public and private sectors of Whatcom County. The components of the Plan include the following:

1. Subarea Description: To generally define Subarea characteristics and establish issue topics, as determined by area residents, the Planning Commission, planning staff, and Jones and Associates, the consulting firm which prepared the background planning study for the Subarea.
2. Population Forecasts: To correlate anticipated population levels with the land use policies and map.
3. Goal Statements: To provide the overall direction for land use planning in Whatcom County.
4. Rationale and Locational Criteria: To establish the necessity of the land use designations and the spatial requirements to be utilized for policy application to the Comprehensive Plan Map.
5. Policies: To provide the primary decision-making tools required to resolve the land use, community facility and utility, transportation/circulation, and environmental issues of the Subarea.
6. Comprehensive Plan Land Use Map: To reflect the spatial distribution of the policy statements; perhaps the most widely utilized component of the Comprehensive Plan.
7. Amendment Criteria: To assist both the public and private sectors with respect to revisions of the Comprehensive Plan Policies and Map.
8. Adoption Certification: To acknowledge the acceptance by the Whatcom County Planning Commission and Council, and the Boundary Review Board, of the Goal Statements and the Subarea Policies and Map.

# Repeal

subarea  
description

# Repeal

## II. SUBAREA DESCRIPTION

### General

The Cherry Point-Ferndale Subarea encompasses approximately 63 square miles. The boundaries are formed by Bay and Harksell roads on the north, Aldrich and Wiser Lake roads on the east, Slater Road on the south and the Strait of Georgia and Birch Bay on the west. The City of Ferndale, with a 1980 population of 3,855, is the predominant residential and commercial node of the Subarea.

### Findings

In November 1979, Jones and Associates, in fulfillment of a contract with the Whatcom County Planning Department, submitted a Comprehensive Planning Study for the Cherry Point-Ferndale Subarea of Whatcom County. A portion of the study contains descriptions of existing conditions within the Subarea for land use, the physical environmental setting, transportation/circulation, utilities and community facilities. Additionally, the report identified specific issues for the aforementioned topics. It is intended in the process of plan revision that issues identified by all participants (consultant, staff, Planning Commission and citizens) shall be resolved and/or addressed by adoption of specific policy statements by Whatcom County.

Excluding the City of Ferndale, the study area contains 37,229 acres. The primary land use of the Subarea is agriculture, consisting of 27,594 acres. This acreage includes uses related to full-time commercial or part-time farming activity and is situated in the Nooksack River floodplain, between Ferndale and the Cherry Point industrial area, and in the northeast portion of the study area. Forest cover, a major secondary use, consists of 5,786 acres and is generally located west of Ferndale in the Cherry Point area and near Birch Bay. Single-family residential and industrial activities are also major uses in the Subarea, consisting of 2,221 and 2,155 acres respectively. Residential uses predominate adjacent to Ferndale and in the North Bellingham and Point Whitehorn areas. Industrial uses are concentrated in the Cherry Point area where a potential exists for continued development based upon deepwater port, rail and road access. A significant visual and land use characteristic is vacant land which comprises 1,402 acres. Retail commercial areas are situated in the West Smith/Northwest roads and Portal Way areas. Other land uses, such as light industry and public, are minimal.

The physical environment of the study area includes six shorelines (Terrell Creek, Nooksack River, Ten Mile Creek, Lake Terrell, Tennant Lake, Barrett Lake). All of the shorelines are subject to flooding and also provide wildlife habitats. Areas located near Lake Terrell, Tennant Lake, Gulf Road and the Terrell Creek outlet have been identified as critical wildlife habitats in the Washington Environmental Atlas. Other aspects of the study area identified locations having variable groundwater levels with certain areas being subject to seasonally high water tables.

Urban type services, such as sewer and water facilities, are generally available within the Ferndale city limits. Although Ferndale will sell water to users outside its incorporated area, sewer service is not extended unless the property to be served is annexed to the city. Other water users



# Repeal

are primarily served by individual on-site wells, water associations, Whatcom County Water District No. 8 or P.U.D. #1.

Community facilities, such as law enforcement agencies, fire protection, health care and recreational facilities, are thought to be adequate. Educational facilities in the study area are not overcrowded.

The existing roadway system is thought to provide an adequate level of service. However, some segments of major arterials are substandard, and a number of intersections have a high accident ratio.

## Citizen Participation and Subarea Issues

The issues of the Cherry Point-Ferndale Subarea are associated with land use, community facilities and utilities, transportation/circulation, and the physical environment. Issue development has its origin in the Subarea background planning study, as conducted by Jones and Associates, and has been augmented by inputs from the Subarea citizens, Ferndale officials and the Whatcom County Planning Commission. The Whatcom County planning staff presented the issues to Subarea citizens at four separate meetings and proposed policies, intended to address or resolve the issues, were later presented to the Subarea citizens at two separate meetings. (A detailed list of issues can be found in the Appendix of the Jones Planning Study). The following is a summary of issues as presented to Subarea citizens.

The area adjacent to the City of Ferndale includes several major land use issues as reiterated by Subarea citizens. Of utmost concern is determining the most effective method of reserving land for future urban development while avoiding the occurrence of nonurban uses and densities which typically present land use transition and service conflicts. Other issues involve the definition of urban and rural services consistent with geographic location, future transportation planning, and conservation of environmental features.

A predominate land use pattern exists in the North Bellingham area which is characterized by low density residential enclaves situated within a rural setting. The major concern to area residents is maintenance of the residential-rural character while retaining future options regarding the provision of urban services and attendant urban densities.

Of particular concern to residents of the nonurban rural portions of the Subarea is the recognition of large contiguous areas which are not considered as a prime land for either agriculture or urban uses. Because of the soil conditions, absence of existing or planned services, and a very low density land use pattern, the major issue relates to the most appropriate application of a future land use designation. Inherent in such land use designations must be provisions for maintaining the rural character, allowing a multiplicity of uses, and acknowledging the physical and cultural limitations of the area.

The major issue involved with agriculture is expansion of the existing Agricultural land use designation to accommodate those commercial agricultural pursuits situated in the Nooksack River floodplain and on Prime Farmland soils as classified by the Soil Conservation Service and the Cooperative Extension Service. A related issue involves minimizing the pressure on commercial agricultural land for conversion to nonagricultural

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uses; thereby encouraging the continuation and conservation of Whatcom County agricultural activities.

A predominant land use pattern in the Subarea is associated with the heavy industry located at Cherry Point. Issues that arose as a result of the existing and effective buffering of surrounding nonindustrial uses, the concern that major industrial developments will cause a need for improved services and facilities, and to what extent major industrial operations should be financially responsible for such services. A related issue involves the need to provide land in optimal locations for spin-off light industrial uses.

The major issues concerning Subarea transportation planning include the identification of major arterials linking the Cherry Point industrial area with I-5, the coordination of transportation planning with the City of Ferndale, and the consideration of alternative transportation modes consistent with demand levels.

The response to and guideline for resolving the aforementioned issues is contained within the policies of this document.

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## III. POPULATION FORECASTS

### Introduction

The purpose of population forecasting as it relates to land use planning is to accommodate the long-term spatial requirements of various land uses, such as residential, commercial, industrial, recreational and public uses. Population forecasting may also be of assistance in decision making for land use related matters such as determining the appropriate scale and location of public works facilities and land development activities. In addition, population forecasts are subject to revision and as such, revision may be accomplished in the five-year comprehensive plan update process.

The population information contained herein is a summary of the forecasts prepared by various agencies. Because of the technical difficulties involved with current and projected population assessment on a Subarea basis, the information is presented by total county, incorporated community and unincorporated county. Furthermore, this information has been utilized in a qualitative manner, or as a general guideline, rather than as a specific numerical forecast. To relate this information to the Cherry Point-Ferndale Comprehensive Plan, the following assumptions are established:

1. Unincorporated areas situated adjacent to Ferndale will tend to experience growth at the same rate as Ferndale, and this growth will tend to concentrate primarily in the URBAN RESERVE area and secondarily in the RESIDENTIAL RURAL area.
2. Unincorporated areas not situated in immediate proximity to Ferndale will tend to experience growth at the unincorporated county-wide rate, and this growth will tend to be situated in RURAL areas.

Tables A, B and C, respectively, relate to Ferndale, unincorporated Whatcom County and total Whatcom County population forecasts. Figures 1, 2 and 3 present this information in a graphical format. The remainder of the information summarizes the various assumptions and variables which affect the included population forecasts.



## FERNDALE POPULATION TRENDS AND FORECASTS: 1970 - 2000

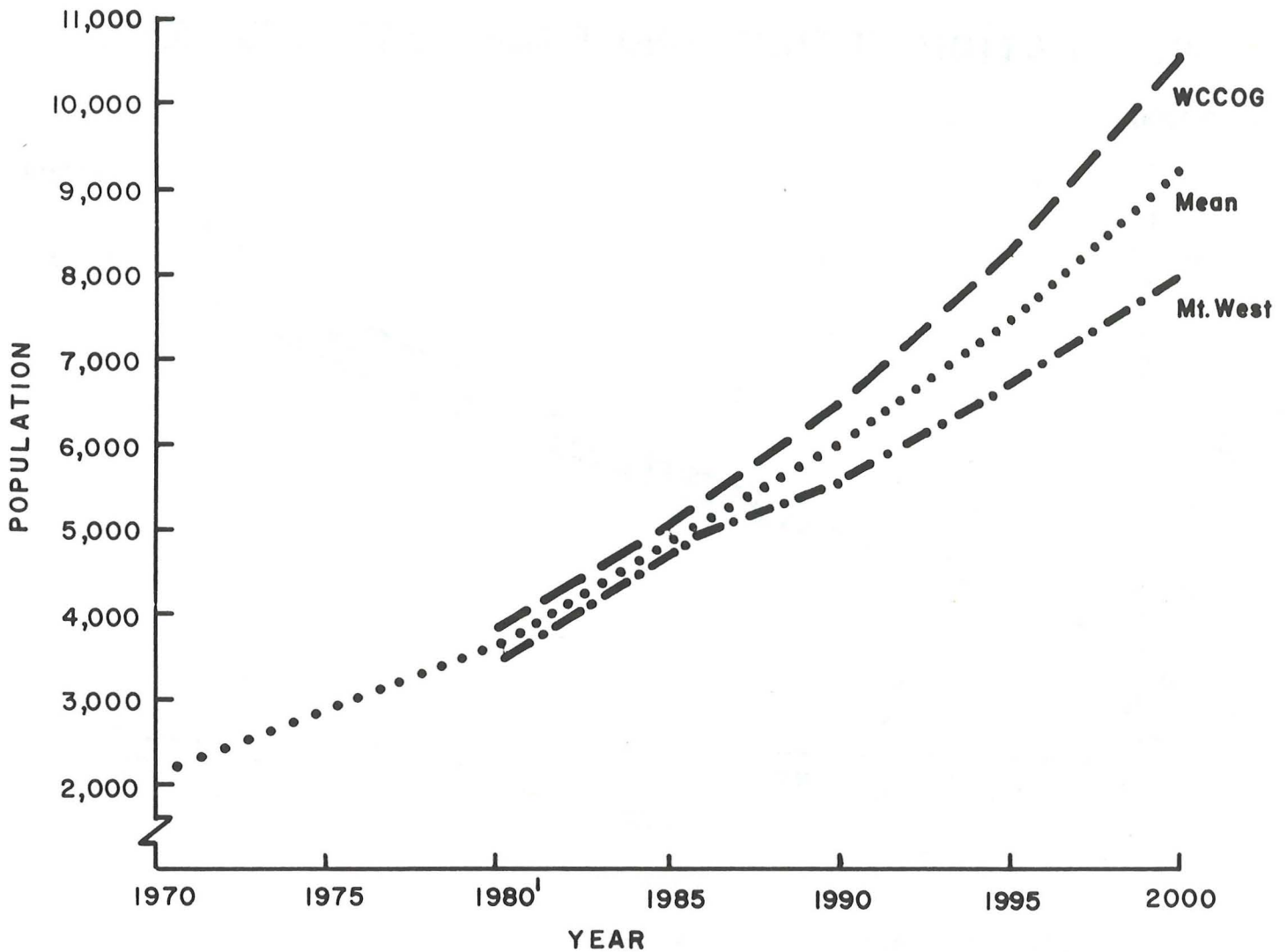


TABLE A

FERNDALE POPULATION TRENDS AND FORECASTS: 1970-2000

RESEARCH AGENCY	1970	1980	1985	1990	1995	2000
U.S. CENSUS	2,164	3,653 <sup>1</sup>				
MT. WEST <sup>2</sup>		3,751	4,844	5,620	6,752	8,041
WCCOG <sup>3</sup>		3,860	5,020	6,530	8,335	10,640
MEAN		3,806 <sup>4</sup>	4,932	6,075	7,544	9,341

### ANNUAL GROWTH RATES

1970 - 1980	1980 - 1990	1990 - 2000
5.38% PER YEAR <sup>5</sup>	4.79% PER YEAR <sup>6</sup>	4.40% PER YEAR <sup>6</sup>

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FIGURE 2

## UNINCORPORATED WHATCOM COUNTY POPULATION TRENDS AND FORECASTS: 1970-2000

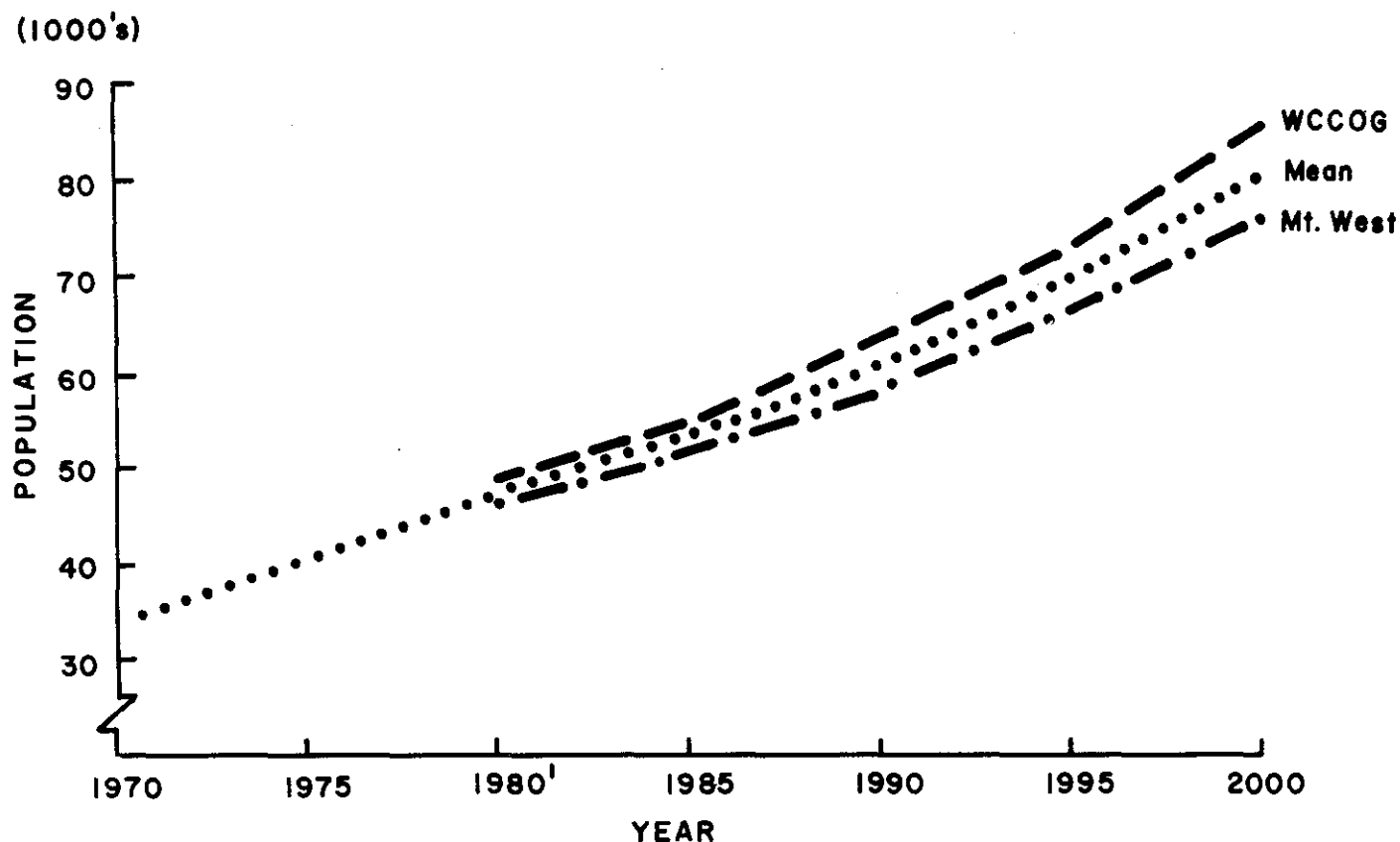


TABLE B

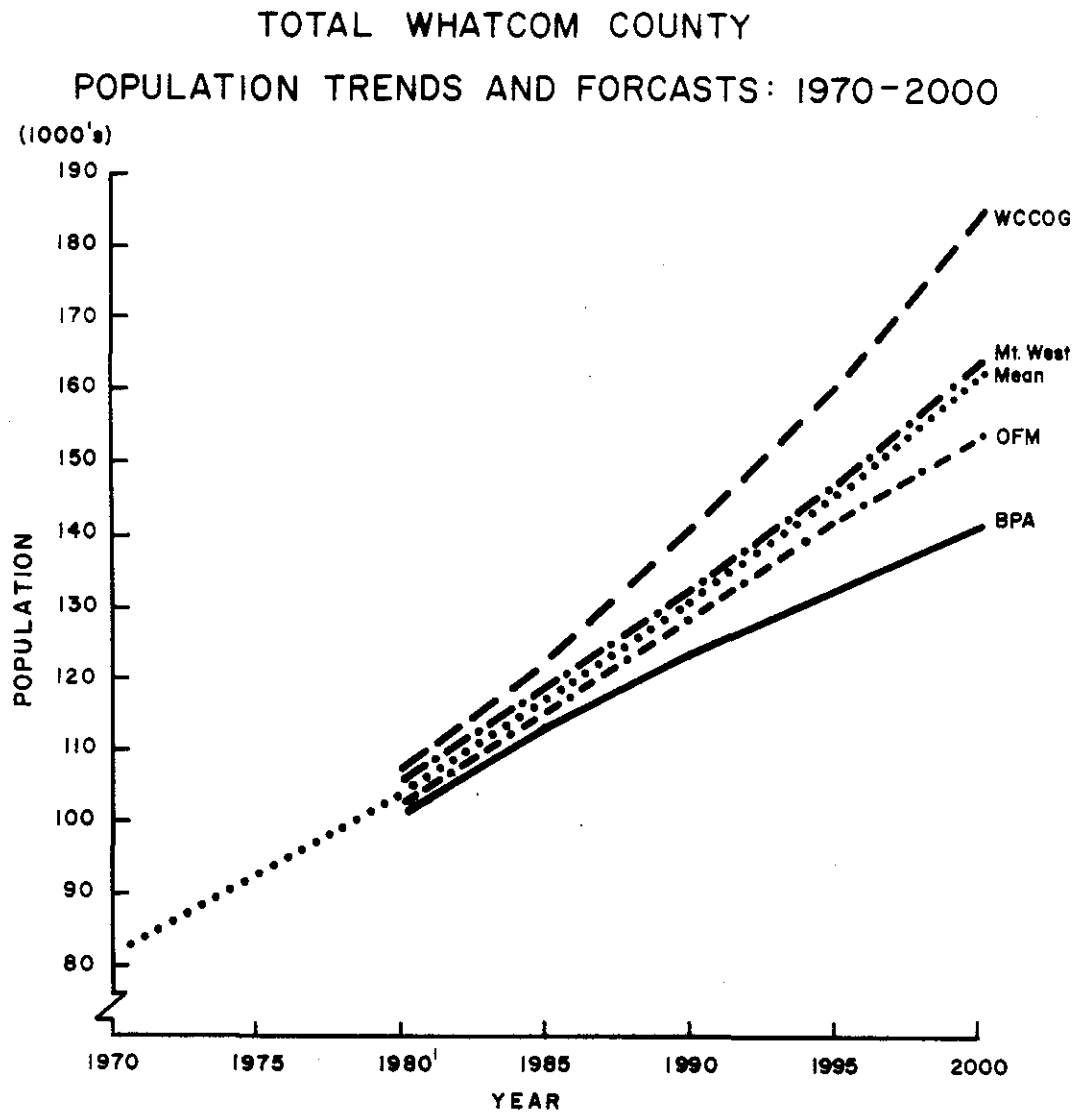
### UNINCORPORATED WHATCOM COUNTY POPULATION TRENDS AND FORECASTS: 1970 - 2000

RESEARCH AGENCY	1970	1980	1985	1990	1995	2000
U.S. CENSUS	34,004	47,652 <sup>1</sup>				
MT. WEST <sup>2</sup>		44,238	52,441	58,621	66,987	76,401
WCCOG <sup>3</sup>		46,451	55,340	64,305	73,603	86,210
MEAN		45,345 <sup>4</sup>	53,891	61,463	70,295	81,306

#### ANNUAL GROWTH RATES

1970 - 1980	1980 - 1990	1990 - 2000
3.43% PER YEAR <sup>5</sup>	3.09% PER YEAR <sup>6</sup>	2.84% PER YEAR <sup>6</sup>

\*Refer to page 13 for footnotes.



RESEARCH AGENCY	1970	1980	1985	1990	1995	2000
U.S. CENSUS	81,983	103,941 <sup>1</sup>				
MT. WEST <sup>2</sup>		101,497	117,578	129,758	146,013	164,241
WCCOG <sup>3</sup>		104,876	122,300	141,160	160,623	184,910
OFM <sup>7</sup>		103,100	115,700	128,569	142,470	153,841
BPA <sup>8</sup>		102,350	113,625	123,925	132,750	141,350
MEAN		102,956 <sup>4</sup>	117,301	130,853	145,464	161,086

ANNUAL GROWTH RATES

1970 - 1980	1980 - 1990	1990 - 2000
2.40% PER YEAR <sup>5</sup>	2.43% PER YEAR <sup>6</sup>	2.10% PER YEAR <sup>6</sup>

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## Assumptions Relating to Population Forecasts

All population forecasts are based on assumptions which affect the numerical results, and population forecasting agencies do not make the same assumptions. The following items are intended to present an overview of assumptions as they relate to Whatcom County populations:

1. In-migration<sup>9</sup> will continue to substantially contribute to population increases at the Washington State and Whatcom County levels.
2. The trend of decreasing family size and population per household will continue.
3. Labor market potential and location will affect population distribution, and gross natural increase and in-migration levels.
4. The purpose of the populations forecast affects assumption utilization, which in turn affects the results.

## Variables Affecting Population Forecasts

Agencies which prepare population forecasts often make revisions due to changes in the variables related to assumptions. The following variables are intended as an overview for potential Whatcom County population forecast revisions and may not affect all the agencies whose forecasts are contained herein:

1. Changes in Whatcom County birth, death and in-migration rates.
2. Changes in the level of industrial development and the related labor market potential of the Cherry Point area, as well as other locations within the county.
3. Changes in the Canadian economy and the related level of Canadian spending<sup>10</sup> in Whatcom County.
4. Changes in the demand for local resources (agriculture, forestry, fishing and mining raw materials or products) with respect to local consumption or state, national or international export markets.

\*Refer to page 13 for footnotes.

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population  
forecasts



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## Footnotes

- <sup>1</sup> Preliminary 1980 U.S. Census figures, July 1980.
- <sup>2</sup> Mountain West Research, Preliminary Population Forecasts as contained within the Demographic Impacts Supplement to the Chicago Bridge and Iron Environmental Impact Statement, June 1980. (Figures are subject to revision)
- <sup>3</sup> Whatcom County Council of Governments, Population Forecasts, June 1980.
- <sup>4</sup> The preliminary U.S. Census figure is not included in the mean calculation.
- <sup>5</sup> Growth rate based upon U.S. Census figures.
- <sup>6</sup> Growth rate based upon mean population forecast figures.
- <sup>7</sup> Office of Financial Management, "Special Report #24," November 1979.
- <sup>8</sup> Bonneville Power Administration, Population, Employment and Households Projected to 2000, July 1979.
- <sup>9</sup> In-migration is equal to total population less natural increase, in which natural increase is equal to total births less total deaths.
- <sup>10</sup> The Whatcom County Council of Government's population forecast exhibits a high correlation with that of the Canadian Impact Study; thus, it is presumed to accommodate Canadian spending.

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## IV. GOAL STATEMENTS

The following goals provide the general direction for making land use decisions in the Subarea and Whatcom County as a whole. They were developed and adopted by the Planning Commission and County Council in July 1979.

### A. Regional Design Goals:

1. Future urban development should occur within or immediately adjacent to existing urban areas in order to eliminate sprawl and strip development, assure the provision of an adequate range of urban services, conserve agricultural and forestry lands, optimize investments in public services and conserve energy resources.
2. Future development in rural areas should be low density, complement existing rural character, contribute to the conservation of agricultural and forest land, and not result in demands for urban-level services.

### B. Growth Management Goals:

1. To promote a conscientious program designed to plan, guide and influence the appropriate location, timing, intensity, type and servicing of diverse land use patterns.
2. To determine the required amounts of land anticipated to be utilized within the planning period (15 years) while retaining options for future land use decisions beyond the planning period.
3. To encourage a predictable pattern of urban and rural development which utilizes previously committed land areas and existing facility investments before committing new areas for development.
4. To ensure that a beneficial balance exists between the supply and demand for public services. To encourage the cooperation among municipalities, special districts, and associations in the planning and provision of public services. To discourage the proliferation of unnecessary special purpose districts.
5. To develop a concise, equitable, and practical set of land use regulations intended to implement the goals, policies and proposals of the County Comprehensive Plan in a timely and orderly fashion.

### C. Land Use Goals:

1. To conserve the agricultural and forest lands of Whatcom County for the continued production of food, forage and timber crops while promoting the expansion and stability of the county's agricultural and forestry economies.
2. Urban residential development should be planned in areas that can be economically and efficiently served with existing or planned services, optimize energy use, function as integral neighborhood units, and can environmentally support intensive land uses.

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3. Adequate community and neighborhood commercial facilities should be encouraged in appropriate locations while avoiding incompatible land uses and the proliferation of unnecessary new commercial areas.
4. To encourage a balanced and diversified economy in order to assure desirable local employment opportunities, and to strengthen and stabilize the tax base. To accommodate anticipated economic development in an environmentally responsible manner with due consideration for public cost, energy availability, land use compatibility and transportation accessibility.
5. To promote the availability of economical and attractive housing for all income, age and ethnic groups, while also enhancing the integrity and identity of existing communities.
6. To promote a functional, coordinated and multi-mode transportation system which provides for the safe and efficient movement of people and goods, avoids undesirable environmental impacts, and optimizes public investments and the conservation of energy resources.
7. Adequate facilities and services which provide diverse education, recreation, cultural and social opportunities should be encouraged.

## D. Cultural and Natural Resources:

1. To identify and manage environmentally sensitive areas in such a manner as to prevent destruction of the resource base and reduce potential losses to property and human life.
2. To continue the identification of cultural and natural resources and formulate viable methods to preserve and conserve such resources in recognition of their irreplaceable character.
3. To promote a park and recreation system which is integrated with existing and planned land use patterns, and is diverse, abundant and assures maximum public access and usage.

## E. Citizen Involvement and Intergovernmental Coordination:

1. To assure opportunity for citizens to be involved in the formulation of land use goals, policies and proposals, and to provide a structure for citizen participation in the planning program of federal, state, regional and local agencies.
2. To participate in intergovernmental coordination with federal, state, provincial, regional and local agencies, to develop a coordinated approach to problems which transcend local government bodies and to create an environment for the exchange of information and technical assistance.

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designations-  
rationale and  
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## V. RATIONALE & LOCATIONAL CRITERIA FOR LAND USE DESIGNATIONS

The comprehensive land use map, together with the policies, designates the most appropriate locations for the various land use patterns of the Subarea. The land use designations as illustrated on the Comprehensive Plan Land Use Map represent the most appropriate uses of land in the Subarea for the planning period. These designations have been developed as a means of addressing or resolving particular land use issues. To be consistent in the application of the designations, as well as to avoid confusion about how the land use map was drawn, the following rationale and locational criteria for each land use designation is set forth.

### A. URBAN RESERVE

#### Rationale:

It is a well established fact in the western U. S. that urban areas have traditionally responded to growth pressures by adhering to policies of outward expansion. As long as this trend continues, there will be an almost constant demand for land, the most fundamental of all urban resources. Although outward urban expansion is accepted as a common city planning practice, problems have typically arisen when potential urban lands have been committed to long-term "nonurban" uses. Primarily caused by the lack of written public policy among governmental jurisdictions, this situation has resulted in uncoordinated and costly service systems, inefficient transportation networks, and unmanageable land use patterns.

As a means of curbing this situation that is currently developing in the urban "fringe areas" of the county, the revised Comprehensive Plan establishes the URBAN RESERVE land use designation. The rationale underlying the designation is to reserve certain land in the fringe areas of cities for future urban purposes and encourage interim uses that are complementary and compatible with future urban densities and service levels. When urban services are eventually provided to this area, land use densities shall increase and result in an orderly, economic and expeditious transition from rural to urban land use patterns. Thus, the URBAN RESERVE designation is defined as those areas adjacent to municipal boundaries which may be urbanized at such time that a full range of urban services (sewer, water, fire and police) can be efficiently provided. In addition, land proposed for annexation to an adjacent municipality shall be evaluated by the Boundary Review Board pursuant to RCW 36.93.170.

#### Locational Criteria:

The criteria to be utilized for the application of the URBAN RESERVE designation includes the following:

1. Land areas adjacent to the City of Ferndale that are of sufficient size to adequately accommodate the projected demands for residential, commercial, industrial, transportation and public land uses for a ten- to fifteen-year time frame.
2. Land areas where a range of urban level services, i.e. sewer, water, fire and police protection, and parks and recreation, presently exist or can be economically and efficiently expanded in the near future.

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3. Areas that contain an adequate supply of vacant urbanizable land to avoid the artificial inflation of land values.
4. The boundaries of the URBAN RESERVE designation should:
  - a. be well defined, logical, provide a physical "sense of community", and be capable of being expanded to accommodate additional urban growth as the need arises; and
  - b. acknowledge existing and potential land use densities as to their urban or rural character. Urban land use densities should be included within the urban service areas; whereas, rural land use densities may be grounds for excluding such areas.

## B. RESIDENTIAL RURAL

### Rationale:

Not all citizens desire to live in concentrated urban areas but instead desire a setting of less density. This setting commonly implies that urban level services are not available, roadway traffic is minimal and that the natural landscape is visually different than urban areas. However, citizens desirous of such an environmental setting usually rely on urban amenities and are not solely self-sufficient. The RESIDENTIAL RURAL designation then is intended to provide the opportunity of a nonurban living experience while minimizing public service costs.

### Locational Criteria:

The RESIDENTIAL RURAL land use designation should be applied to land areas where past public commitments have been made for moderately dense residential, public and commercial uses; where a full range of urban level services are not planned; and where capital improvements to existing roadways are only maintenance oriented.

## C. RURAL

### Rationale:

Certain lands of the county may be considered to be in transition between previous full-time agricultural or forestry activities, and current residential and/or industrial uses. The present land use pattern is characterized by part- to full-time farming or forestry and low density residential activity. This type of landscape can be considered as "rural," an area containing a combination of pastureland, cropland, woodlots and dispersed settlement land use patterns.

Dispersed settlement patterns are perhaps caused by the absence of past and future public commitments concerning the provision of sewer, water and roadway improvements. Additionally, physical conditions (soils, water or topography) may have imposed constraints to development. These factors will continue to affect land use trends during the planning period.

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These areas may also contain nonrenewable natural resources, such as soils which contribute to agricultural productivity, or sand and gravel deposits suitable for extraction.

The rural areas of Whatcom County offer alternative residential living styles compared to that of the urban or moderately dense residential setting. Employment alternatives also exist that are associated with part- to full-time agriculture, forestry and home occupations. In addition, the existing parcel sizes are sufficient to accommodate future land use disposition, beyond the planning period, as agricultural, industrial or moderate density residential areas.

Thus, the RURAL designation is important in the Subarea Plan in that it provides flexibility concerning low density residential, forestry and agricultural land uses while retaining future private and public options pertaining to land management.

## Locational Criteria:

To define those locales where the RURAL designation may be applicable, criteria concerning "rural" character, social factors and physical conditions are employed. To be designated as RURAL, a majority of the criteria must pertain.

"Rural" character is defined by dwelling unit density, average parcel size and land use history. Dwelling unit density should be less than or equal to one (1) dwelling unit per five (5) acres and average parcel size should be greater than or equal to five (5) acres. Land use history should indicate a blend of part- and full-time agriculture, forestry and low density residential activities.

Social factors relate to public expenditures for sewer, water and roadway provision. During the planning period, such areas have not been designated for city or county provision of sewer and water. Likewise, public expenditures for construction of or improvements to roadway systems have not been planned.

Physical conditions relate to developmental constraints or future access to nonrenewable natural resources. Developmental constraints pertain to soils and water. For example, soils which contribute to seasonally high water tables or have very slow permeability rates may impact efficient septic tank operation. Excessive depths to the regional water table, undependable surface water sources and areas of groundwater (aquifer) recharge may limit both agricultural and residential opportunities.

Future access and utilization options pertain to nonrenewable natural resources such as soil types and geological units. Such areas may contain a majority of soils designated as Farmlands of Statewide Importance (soils which may contribute to agricultural productivity) or geological units composed of sand and gravel which are suitable for extraction (Bellingham Glaciomarine Drift, Sumas Outwash or Terrace Deposits).

Thus, the RURAL Locational Criteria are intended to define areas of multiple land use suitability (agriculture, forestry, mining and low density residential) as contrasted with those areas where a single land use may be appropriate.



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## D. AGRICULTURAL

### Rationale:

The AGRICULTURAL land use designation is necessary to identify areas suitable for the practice of commercial agriculture. Commercial agriculture is a significant industry in Whatcom County and potentially more significant as indicated by the currently estimated farm gate income of \$76 million dollars. Related industries add perhaps another \$100 million dollars to the economy as a direct result of agricultural production. As significant as agriculture is to the local economy of the county, agricultural lands are often used for other purposes, namely urban uses. Urban encroachment can raise the assessed valuation, resulting in higher property taxes for the farmer. Premature urban development frequently forces the farmer to sell agricultural lands for urban purposes. This situation is especially pronounced in the "Urban Fringe" areas of cities, the area where urban growth pressures are most evident. However, the rapid rate of farmland conversion nationwide is being recognized at the federal, state and local levels of government. Increasingly, communities across the nation are taking steps to inventory farmlands and devise techniques to preserve farmland with the assistance and cooperation of the landowner/farmer.

As a means of addressing this emerging issue, the revised Comprehensive Plan establishes the AGRICULTURAL designation, the rationale of which is to promote agriculture by retaining lands suitable for commercial agricultural pursuits.

### Locational Criteria:

Physical and cultural characteristics are employed to designate areas for commercial agricultural operations. The criteria are requirements for the AGRICULTURAL designation and it is intended that when in evidence, the area shall be designated as AGRICULTURAL. Physical characteristics include land classified as "Prime Farmland" by the Soil Conservation Service and Cooperative Extension Service and land defined as "Farmlands of Statewide Importance" by the soil Conservation Service. Cultural characteristics include areas: where the predominant land uses are full- of part-time agricultural operations, including silviculture, and it is evident that no commitment to nonfarm uses other than dwelling units has been made; where urban services, i.e. sewer and water, are not planned; where the land use history indicates farming has been a viable land use or a potentially viable use; and where there is a pattern of capital investment in agricultural operations.

## E. PUBLIC

### Rationale:

This designation recognizes those parcels and facilities currently in or planned for public ownership where the primary function is to provide public services. The intent of this designation is to assure continuation and potential expansion of acreages, facilities and services at levels consistent with population requirements and effected in a manner that is compatible with surrounding land uses.

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## Locational Criteria:

To identify those areas appropriate for the PUBLIC designation, the following criteria are employed:

1. Parcels are currently owned or considered for ownership by public agencies such as the Federal Government, State of Washington, Whatcom County, city properties situated outside of municipal boundaries, and independent jurisdictions (Port of Bellingham and Public Utility District #1); and
2. the primary function of parcel ownership is to provide public services, i.e. recreation, education, utilities, communication, transportation (not including roadways), solid waste disposal and health care.

## F. LIGHT INDUSTRIAL PARK

### Rationale:

Currently, manufacturing assumes a significant role in the county's economy, and this role is anticipated to continue in the future. It is incumbent upon the county to provide a reasonable supply of land for uses ancillary to the heavy impact industrial area, as well as other manufacturing and commercial sectors of the economy. One form of industrial land use is characterized by the light industrial park.

A light industrial park is generally a pre-planned site, owned and managed in common where a variety of light industrial uses occur that negligibly impact surrounding areas. Uses primarily relate to distribution, fabrication and storage functions that optimize transportation access. Light industrial parks offer economic advantages in that auxiliary functions are shared for uses such as internal roadways, landscape maintenance, security and power, sewer and water utilities, resulting in minimized cost duplication for participating industrial interests.

The underlying rationale of the LIGHT INDUSTRIAL PARK designation is to supply a reasonable amount of land for anticipated light industrial and related uses that will optimize transportation access, proximity to industrial and urban areas, and compatibility with adjacent land uses while expediting efficient public and private expenditures. Currently, services may not be present; however, it is anticipated that these requisite factors will be available in the future to foster development and augment the county's economic base.

### Locational Criteria:

Physical, transportation, land use suitability and cultural factors may be analyzed to determine appropriate locations for LIGHT INDUSTRIAL PARKS. Physical factors consist of generally level terrain and soils having good drainage and bearing capacity. Transportation factors apply to the availability of direct rail and major arterial and/or freeway access.

Land use suitability pertains to parcels generally ranging from 40 to 320 acres in size that are currently void of potentially incompatible uses. Cultural factors are applicable to those areas where public sewer and water

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services exist or are planned, and where a three mile commuting distance from population centers of greater than 1,000 people pertains.

## G. HEAVY IMPACT INDUSTRY

### Rationale:

In 1954 the Mobil Oil Company constructed an oil refinery at Cherry Point in Whatcom County. That refinery was followed in 1966 by Intalco Aluminum, and in 1971 by another oil refinery constructed by the Atlantic Richfield Company (ARCO). Together these companies employ approximately 1,800 workers and represent a significant part of the local economic base for the manufacture of durable and nondurable goods.

The selection of the Cherry Point site by these companies was indicative of a trend by industry, over the last several decades, to relocate away from cities. Recognizing the requirements of modern industry and the commitment to water-dependent industry at Cherry Point, Whatcom County designated approximately 6,000 acres for heavy industry.

In designating a large land area for industrial uses at Cherry Point, Whatcom County has acknowledged a commitment to provide a supply of vacant land capable of development, to meet the demand for heavy manufacturing uses that are anticipated for the planning period. Additionally, Whatcom County is promoting a diversified economy to assure local employment opportunities and to strengthen the tax base.

### Locational Criteria:

Two sets of locational criteria are utilized to designate areas for industrial operations: the physical environmental setting and man-made components of the environment. Any area under study for the applicable designation of HEAVY IMPACT INDUSTRIAL should be sufficiently large, flat, well-drained and have good land bearing qualities. Man-made components should include industrial rail service, good access for truck transportation, an adequate supply of labor, utilities, and a site which is relatively isolated from less intensive land uses. Moreover, the industrial area should be within a reasonable commuting distance of available housing. Unique features such as deepwater access for ocean going shipping should also be considered in site selection.

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## VI. POLICIES

### Introduction

The policy section of the plan provides the basis to guide and influence the appropriate location, type, intensity, timing and servicing of land use patterns within the Subarea. The policies have been developed in accordance with the county's planning process and are intended to respond to the myriad of issues identified by the public and private sectors of the county.

Whereas the goal statements indicate "where we are going" with respect to future land use decisions, the policies serve as statements of "how we get there." Thus, the policies can be viewed as specific courses of action intended to move toward the attainment of the County Goal Statements.

The following policies address the various land use designations illustrated on the Comprehensive Plan Land Use Map, community facility and utilities, environmental features and transportation.

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## A. URBAN RESERVE

### Intent Statement

The primary purpose of the URBAN RESERVE policy is to promote an orderly transition from rural land uses and densities to urban uses and densities, while moving toward the attainment of the Regional Design Goal with respect to future urban development. In addition, the policy intends to encourage the responsible growth of urban areas by assuring that an adequate range of urban services (sewer, water, fire and police protection) are available to support urban level densities. When such services are available, development should occur in neighborhood units which have appropriate levels of densities, uses and circulation networks.

To facilitate future urban growth, the URBAN RESERVE policy is intended to discourage the establishment of interim uses and subdivision patterns which may foreclose significant future alternatives pertaining to urban densities and the efficient provision of services. Moreover, this policy is intended to maintain, prior to the approval of an accepted site specific plan for the implementation of services, the low density character of the area and to allow reasonable uses of property by permitting compatible residential, recreational, commercial, industrial and agricultural land uses. Finally, the designation and application of the URBAN RESERVE policy is intended to accomplish the following objectives:

1. To reduce urbanization and encroachment pressures on lands that are most suitable to intensive agricultural or forestry operations.
2. To stabilize land speculation and the artificial inflation of land values in the "urban fringe" by designating an adequate amount of land for urban growth and uses during the planning period.
3. To provide land owners with a reasonable expectation of future municipal and county land use policies.
4. To reduce inequitable taxing structures on nonurban land located near urbanizing areas.
5. To conserve energy resources by reducing unnecessary travel between living, shopping and work places.
6. To encourage the conservation of natural resources and environmentally sensitive areas, both within and outside of the area designated as URBAN RESERVE.

### Policy Statement

- 1.01 It is herein the policy of Whatcom County to recognize the City of Ferndale as the primary urban service authority for lands surrounding its current municipal boundaries. To facilitate the future urbanization of certain lands lying within the 1972 Ferndale Service Area, Whatcom County does hereby designate such lands as URBAN RESERVE on the Comprehensive Plan Land Use Map. The boundaries of the URBAN RESERVE designation have been delineated in conformance with the Locational Criteria, as set forth in the previous section. The predominant land use pattern within the URBAN RESERVE area shall be residential and related forms, including neighborhood parks.

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Secondary land uses shall include commercial and light manufacturing functions, as provided in Policies 1.08 and 1.09.

- 1.02 Within the area designated as URBAN RESERVE, the future land use patterns are intended to be urban. Similarly, the level of services should be urban in nature. Thus, future urban development shall be provided with public sewer and water, fire and police protection, and standard transportation and drainage systems. If services are provided by the City of Ferndale, service levels shall be consistent with appropriate city standards and policies. If, however, Whatcom County is designated in the future as a viable service entity, the Whatcom County Comprehensive Sewer and Water Plan, and Engineering Design Standards and Specifications shall be amended to define the precise urban level standards to be applied.
- 1.03 It is the policy of Whatcom County to encourage the placement and/or extension of sewer and water lines in a manner that is contiguous to existing development(s). Such phased line placement is intended to discourage the occurrence of "leapfrog" development within the area designated as URBAN RESERVE.
- 1.04 To move toward the implementation of the county's urban residential land use goal and to further the intent of the URBAN RESERVE land use designation, it is the policy of Whatcom County to participate with the City of Ferndale in the designation and planning of future urban neighborhoods. These neighborhoods should be based on the following commonly accepted criteria: sufficient size, utilization of man-made and/or natural boundaries (roads, railroad tracks, rivers and topography); the manageable and efficient provision of sewer, water and transportation services; and an available supply of vacant developable land. The components of a neighborhood should include the following: an elementary school, if necessary; recreational facilities, including neighborhood parks; neighborhood commercial uses; a variety of residential structures and uses, including mobile homes; and efficient pedestrian and vehicular circulation networks.
- 1.05 To reserve residential lands, within the URBAN RESERVE area for the eventual conversion to urban densities, it is the policy of Whatcom County to establish a land use density that shall not exceed one (1) dwelling unit per five (5) acres in size. To implement this policy, Whatcom County shall amend its Interim Zoning Map from Suburban District - Three (3) Families Per Acre, Suburban Farm One Acre and General Protection to the Urban Residential zoning district.
- 1.06 At such time that urban level services (sewer and water) can be provided to a designated neighborhood area, Section .251 of the Urban Residential zoning district shall be applicable. Pursuant to Section .301 and applicable to the immediate area of sewer and water line service, the allowable lot size shall be decreased from five (5) acres to 12,000 square feet per residential dwelling unit. However, if certain lands situated within the designated neighborhood are annexed to the City of Ferndale, the appropriate residential zone of the city shall be utilized, as determined by the City of Ferndale.
- 1.07 Lands within the Urban Reserve area may, however, be developed prior to the provision of urban services from the City of Ferndale. Developments proposed prior to the provision of such services shall be designed in such a



# Repeal

manner as to be complementary to the eventual conversion to urban patterns and logical transportation and service extensions. To accomplish this option, proposed developments shall (a) be designed as a cluster subdivision; (b) adhere to a maximum density of one (1) dwelling unit per five (5) acres; (c) contain lot sizes consistent with Whatcom County Health Board Rules and Regulations; (d) be planned in relationship to the city's future neighborhood transportation network; (e) be compatible with the city's planned sewer and water service corridors; and, (f) be harmonious with the city's future annexation program.

1.07.1 The cluster method of subdivision is defined as an alternative method of creating building parcels that involves:

- (a) The concentration of spatially efficient and marketable building lots while preserving the intent of the land use district; and
- (b) The retention of options for future uses and densities by treating the land as both a commodity and a resource.

The density of the use district defines the number of allowable dwelling units per land area but does not define lot size. Lot size is determined by the landowner and Whatcom County Health Board Rules and Regulations concerning soil percolation rates. Land area not used for building purposes is designated as "Reserve Tract" and should be used for open space purposes until such time that sewer and water services can be provided by the City of Ferndale. Upon the provision of such services, said Reserve Tract will be appropriate for residential densities consistent with the City of Ferndale.

1.08 The existing land use pattern in the Portal Way corridor, between Trigg Road and I-5, is a mixture of low density residential, highway-oriented commercial and agricultural land uses. With the provision of urban services, this area will realize a more intensive land use pattern in the future. To accommodate the transition to urban densities and uses, the following policies are provided:

- 1.08.1 To designate the Portal Way corridor as URBAN RESERVE on the Comprehensive Plan Land Use Map.
- 1.08.2 To acknowledge the existence of the general commercial land use pattern situated between the Newkirk Road area southward to the Interstate 5 overpass; however, to discourage the northerly expansion of commercial uses beyond the Newkirk Road area.
- 1.08.3 To contain the general commercial land use pattern in the Trigg, Portal Way and Enterprise Road area and discourage the northward expansion along Enterprise Road and southward expansion along Portal Way.
- 1.08.4 To implement the commercial nodes acknowledged in Policies 1.08.2 and 1.08.3, the General Commercial zoning district shall be applied.



# Repeal

- 1.08.5 With reference to future commercial developments occurring within the nodes established in Policies 1.08.2 and 1.08.3, it is the policy of Whatcom County to encourage the preservation of the existing vegetative screen along I-5 and Portal Way.
- 1.09 Locations exist within the area designated as URBAN RESERVE which may not be readily incorporated into neighborhood units due to existing nonresidential land uses. When urban service (sewer and water, and police and fire protection) are provided to these locations, both residential and nonresidential land uses will intensify. To acknowledge these locations and ensure compatibility between future urban uses, the following policies are provided:
  - 1.09.1 To implement the existing light industrial land use in the Thornton Road and I-5 area, the Light Impact Industrial zoning district shall be applied.
  - 1.09.2 To implement the existing commercial uses situated in a portion of the area adjacent to Frontage Road and between West Smith and Byers roads, the General Commercial zoning district shall be utilized.
  - 1.09.3 It is the policy of Whatcom County to require a site periphery buffer for nonresidential land uses occurring in the areas established in Policies 1.09.1 and 1.09.2. The purpose of the buffer is to minimize visual disturbances to both adjacent residential land uses and passing motorists.
- 1.10 At present, several productive agricultural or stable large lot residential land use forms exist within the area designated as URBAN RESERVE. Because of their well-established nature, it is conceivable that such areas may not be converted to urban densities in the future. As urbanization occurs on the periphery of these areas, it is important to maintain their respective character and stability while ensuring against detrimental impacts. Thus, the following design standards shall be applied to adjacent urban development:
  - 1.10.1 Residential subdivisions and other urban uses shall buffer themselves with adequate landscaping, screening or fencing to prevent the encroachment of vehicles, pedestrians, animals and nuisances onto less intensively utilized parcels.
  - 1.10.2 Where practicable, subdivision and other urban uses shall be designed in such a manner as to channel their activity sources (vehicular and pedestrian networks) to the interior spaces of the site.
- 1.11 As part of the effort to effectively manage urban growth, the City of Ferndale has stated that a need exists to be constantly aware of land use, service and transportation changes proposed within the Cherry Point-Ferndale Subarea. So that the city may be aware of major Subarea activities which may affect its best interests, the following policies are provided:
  - 1.11.1 It is herein the joint policy of the city and county to establish the Cherry Point-Ferndale Subarea as the city's "Sphere of Influence Area."

# Repeal

- 1.11.2 To further a joint exchange of information, Whatcom County shall send copies of applications of major land use, transportation and service entity activities proposed within the Subarea to the City of Ferndale within fifteen (15) days of application receipt by the county.
- 1.11.3 The City of Ferndale shall send copies of future proposals concerning the expansion of the 1972 Ferndale Service Area boundary to the Whatcom County Planning Department. The purpose of such referral is to afford the county's input in the delineation of the boundary, as well as any related Comprehensive Plan and zone district changes.
- 1.12 While it is not anticipated that adjustments to the URBAN RESERVE land use designation will be necessary within the planning period, unexpected population growth of the Subarea may result in a need to expand the area designated as URBAN RESERVE. If such need exists, the Comprehensive Plan should be amended consistent with the Amendment Criteria Section to include additional urbanizable land commensurate with the demand.

# Repeal

## B. RESIDENTIAL RURAL POLICY

### Intent Statement

The primary intent of the RESIDENTIAL RURAL designation is to provide an opportunity for citizens to live in a nonurban residential environment characterized by low density residential settlements which are integrated with agricultural and woodlot land use forms. In addition, this designation is intended to acknowledge existing low density residential land use patterns in which a full range of services (sewer and water) are not currently planned; however, realizing that provision of these services and concomitant densities may be considered as a future option. As a means of efficiently utilizing land, maintaining the present low density residential character and retaining future options regarding increased densities and service provision, it is the intent of the RESIDENTIAL RURAL designation to provide for the option to the applicant of "clustering" in the design of new subdivision proposals.

### Policy Statement

- 1.01 Recognizing the past public commitments that have been made for low density residential and related uses, it is the policy of Whatcom County to designate the area commonly known as North Bellingham as RESIDENTIAL RURAL and depict it as such on the Comprehensive Plan Land Use Map.
- 1.02 Within the area designated as RESIDENTIAL RURAL, typical uses shall include single-family attached and detached dwellings, preferably in a "cluster" formation; public parks and recreation facilities; agriculture and related uses; home occupations; and neighborhood grocery stores.
- 1.03 Whatcom County shall implement the RESIDENTIAL RURAL designation by application of a Residential Rural zoning district, in which the overall density of development shall not exceed one (1) dwelling unit per acre, unless Ferndale water is available, in which case the overall density of development may be increased to not more than two (2) dwelling units per acre. The purpose of this zoning district is to maintain the low density residential character of the area, retain future public and private options with respect to land use density and service requirements, and to provide to the applicant the option of "clustering" in the design of new subdivisions; thus promoting economical lot design, energy conservation and a reduction in development costs.
- 1.04 Within the Residential Rural zoning district, new land subdivision for residential purposes shall be designed consistent with the following policies:
  - 1.04.1 The overall density of development pertinent to the original parcel of record shall not exceed one (1) dwelling per acre, unless Ferndale water is available, in which case the overall density of development may be increased to not more than two (2) dwelling units per acre.
  - 1.04.2 To minimize encroachments (ingress and egress) along existing county roads, subdivision design shall be discouraged from forming lineal residential patterns adjacent to said roads.

# Repeal

- 1.04.3 When practicable, structures on open landscapes should be sited and designed to minimize disruption of views from adjacent properties and public roadways. In addition, it is preferred that residential structures be placed at the perimeter of fields or within existing wooded areas.
- 1.04.4 When a "cluster" subdivision is situated adjacent to less intensive land use designations (AGRICULTURAL or RURAL), the subdivision shall be buffered at the site periphery to prevent the encroachment of vehicles, pedestrians, animals and nuisances onto other less intensively utilized areas.

# Repeal

## C. RURAL POLICY

### Intent Statement

The primary purpose of the RURAL policy is to provide areas of multiple use suitability; such as agriculture, forestry, mining, low density residential and home occupations. The multiple use potential of RURAL areas may be contrasted with those of other areas within which past commitments (for example, residential subdivisions) or resource availability, such as agricultural soils or timber stands, have dictated single land use suitability.

An additional purpose of the policy is to move toward attainment of the Regional Design Goal with respect to future rural development in which residential density should be low, not result in a demand for urban services (sewer and water), conserve agricultural and forest lands, and complement the existing "rural" character. The "rural" character may be defined as an area where there is a mixture of pastureland, cropland, woodlots and dispersed settlement land forms.

The RURAL policy is also intended to acknowledge physical and cultural factors which currently are and, during the planning period, will continue to be limitations to higher densities. Physical factors relate to soil percolation rates, depth to groundwater level and steep topography; whereas, cultural factors pertain to the absence of sewer, water and circulation networks. Moreover, this policy intends to conserve environmentally fragile areas and retain future access options with respect to nonrenewable natural resources (sand and gravel suitable for extraction and soils which may contribute to agricultural productivity).

To encourage the multiple land use potential, retain the "rural" character of the area, acknowledge factors which may present limitations to higher densities, and retain future options with respect to land use decisions and natural resource utilization, it is the intent of the RURAL policy to provide for the option to the applicant of "clustering" in the design of new subdivisions.

### Policy Statement

- 1.01 It is herein the policy of Whatcom County to designate those portions of the Cherry Point-Ferndale Subarea which are consistent with the Rural Locational Criteria as RURAL and depict them as such on the Comprehensive Plan Land Use Map. Principle uses of the RURAL policy shall include part- or full-time agriculture and forestry, as well as low density residential uses. Secondary uses shall include home occupations, utilities and aggregate extraction.
- 1.02 To implement this policy, the existing Rural, Rural Farm and Select Industrial Reserve land use designations, as applicable to the central, northwestern and southeastern portions of the Subarea, shall be repealed and amended to RURAL, consistent with the policies state herein.
- 1.03 The Rural land use designation shall be implemented through the use of the Rural zone district which allows a maximum land use density of one (1) dwelling unit per five (5) acres and one (1) dwelling unit per ten (10) acres. Pursuant to Policy 1.04, this district shall also contain a provision for a "cluster option" of subdivision design.
- 1.04 Within the Rural zone district, a clustering option shall be provided to the applicant for new land subdivisions. The purpose of this option is to

# Repeal

provide economic flexibility to the individual property owner, promote economic lot design, conserve nonrenewable natural resources and environmentally fragile areas, retain future options with respect to land use decisions, and maintain the low density "rural" character of the area. When applying the "clustering option," the appropriate zone classification, as established in the zoning ordinance, shall be utilized to establish the overall density of the original parcel of record. For example, a forty acre parcel situated within a Rural Five Acre (R5A) zone classification could have a maximum of eight building lots with the minimum lot size governed by the zone classification's setback requirements and by the Whatcom County Health Department approval for individual on-site septic disposal systems. In addition, new land subdivisions for residential purposes shall be designed consistent with the following policies:

- 1.04.1 To minimize encroachments (ingress and egress) along existing county roads, subdivision design shall be discouraged from forming lineal residential patterns adjacent to said roads.
  - 1.04.2 When practicable, structures on open landscapes should be sited and designed to minimize disruptions of views from adjacent properties and public roadways. In addition, it is preferred that residential structures be placed at the perimeter of fields or within existing wooded areas.
  - 1.04.3 When a "cluster" subdivision is situated adjacent to less intensive uses (agriculture, forestry or large parcel residential), the subdivision shall be buffered at the site periphery to prevent the encroachment of vehicles, pedestrians, animals and nuisances onto less intensively utilized parcels.
- 1.05 The cluster method of subdivision is defined as an alternative method of creating building parcels that involves:
- (a) the concentration of spatially efficient and marketable building lots while preserving the intent of the land use district; and
  - (b) the retention of options for future uses and densities by treating the land as both a commodity and a resource.

The density of the use district defines the number of allowable dwelling units per land area but does not define lot size. Lot size is determined by the land owner and Whatcom County Health Board Rules and Regulations concerning soil percolation rates. Land area not used for building purposes is designated as a "reserve tract" and should be used for agriculture, forestry, open space or future subdivision at such time as the plan is amended. The Official Whatcom County Zoning Ordinance describes the density for various use districts where the cluster method can be utilized, the criteria to be used in designing building lots and the provisions of the reserve tract.

- 1.06 It is the policy of Whatcom County to encourage property owners to conserve Prime Farmlands, Farmlands of Statewide Importance and forested areas by utilizing RCW 84.34.

# Repeal

- 1.07 In acknowledgement of the Light Industrial Park designation at I-5 and Grandview Road, the Heavy Impact Industrial designation at Cherry Point and the extensive vehicular usage of the I-5 corridor, it is the policy of Whatcom County to permit an area not to exceed twenty-five (25) acres in each of the northeast and southeast quadrants of the Grandview/I-5 interchange to be used for general commercial uses under the General Commercial zoning district, including a commercial truck service facility. Accessory uses associated with a "truck stop" facility should include truck fueling, repair and storage facilities, and overnight accommodations including restaurant facilities.



# Repeal

## D. AGRICULTURAL POLICY

### Intent Statement

The purpose of the AGRICULTURAL designation is to maintain and encourage the conservation of agricultural lands in Whatcom County. Moreover, specific delineation of AGRICULTURAL areas implicitly directs nonagricultural land uses to rural or urban areas, and thus, minimizes conflicts between agricultural and nonagricultural uses. Furthermore, both the private and public sectors will retain options for future land use decisions. Additional intents of the AGRICULTURAL designation include maintaining natural systems and processes; conserving energy, in that less energy is required to farm the most fertile agricultural lands; sustaining specialty crops, such as strawberries, raspberries and blueberries; and moving toward attainment of the Whatcom County Goal Statements pertaining to the conservation of agricultural lands.

### Policy Statement

- 1.01 Large contiguous areas of the county shall be designated exclusively for agriculture. All areas that are consistent with the Agricultural Locational Criteria should be designated as AGRICULTURAL, recognizing that this criteria may be augmented by additional information related to changes in technological, economic and physical conditions. Typical AGRICULTURAL uses include the cultivation, management and harvest of field, shrub, vine, greenhouse, orchard and forest crops; dairying, livestock raising and small animal husbandry; beekeeping and mushroom raising. Land designated as AGRICULTURAL shall be encouraged to continue in such uses and shall be protected from external factors which may cause conversion to nonagricultural uses.
- 1.02 To implement the AGRICULTURAL designation, the Comprehensive Plan Map shall be amended from Rural and Rural Farm to AGRICULTURAL in the Nooksack River floodplain and certain areas directly west thereof, and in the area of West Wiser Lake and West Pole Roads.
- 1.03 Zoning implementation of the AGRICULTURAL land use designation shall be accomplished by application of an Agriculture District. Minimum parcel sizes shall be determined as follows:
  - 1.03.1 When the parcel is to be utilized for agricultural purposes, a minimum parcel size shall be determined that is consistent with the acreage required to sustain an economic and intensive agricultural operation.
  - 1.03.2 When the parcel is to be utilized for nonagricultural purposes, the minimum parcel size shall be forty (40) acres.
- 1.04 Residential subdivisions and nonagricultural related uses shall be discouraged from locating within designated AGRICULTURAL areas.
- 1.05 The implementation of "special district" plans and capital improvement programs shall not result in detrimental impacts to the AGRICULTURAL lands of Whatcom County.



# Repeal

- 1.06 It shall be the policy of Whatcom County to encourage the retention of small family farms by supporting direct marketing programs for the Whatcom County farming community.
- 1.07 It shall be the policy of Whatcom County to encourage the agricultural community to utilize the tax benefits of RCW 84.34.
- 1.08 To promote the conservation of agricultural lands and the economic stability thereof, it shall be the policy of Whatcom County to coordinate and participate in programs with the Agricultural Extension Service, Soil Conservation Service and other agricultural organizations.

# Repeal

## E. PUBLIC POLICY

### Intent Statement

Pertinent to existing or contemplated parcels in public ownership, the intent of the following policies is to implement the Goal Statements that relate to public facilities and services, and ensure the continued public provision of a variety of services, commensurate with population levels and requirements. Furthermore, these policies are intended to optimize public investments and promote compatibility between public functions and surrounding land uses.

### Policy Statement

- 1.01 It is the policy of Whatcom County to identify those geographical locations currently in or considered for public ownership and/or management, where the primary function is the provision of public services. These areas shall be designated PUBLIC on the Comprehensive Plan Land Use Map. Uses typical of the designation are facilities and services related to the provision of recreation, education, utilities, communications, transportation, solid waste disposal and health care.
- 1.02 To implement PUBLIC policies with the Cherry Point-Ferndale Subarea, the following functions shall be designated as PUBLIC: State, city and county-owned parks and wildlife reserves, libraries, schools, fire stations, cemeteries, nursing homes, water and sewerage treatment facilities, road maintenance facilities, and federally owned substations and transmission line corridors. As each public agency obtains parcels, the Whatcom County Comprehensive Plan Map shall be amended, consistent with the amendment criteria.
- 1.03 Zoning of the PUBLIC designation shall be accomplished by:
  - 1.03.1 Application of a Recreation and Open Space zone to public recreation areas;
  - 1.03.2 Designating all other public functions to be used by right or condition within all zoning districts of Whatcom County.
- 1.04 Pursuant to the Inter-Local Cooperation Act (RCW 39.34), it is the policy of Whatcom County to encourage public agencies to prepare and adopt long-range plans which address future land, facility and service requirements; the objective of which is to coordinate public and private activities, as well as to minimize potential future conflict regarding plan implementation.
- 1.05 It is the policy of Whatcom County to cooperate and coordinate with the Whatcom County Parks Department to integrate existing park plans into a Recreation and Open Space Element that will augment the Whatcom County Comprehensive Plan. In addition, the Whatcom County Parks Department shall be encouraged to participate in neighborhood park planning within the areas designated as URBAN RESERVE and RESIDENTIAL RURAL on the Comprehensive Plan Land Use Map.
- 1.06 It is the policy of Whatcom County to encourage public agencies to attain those parcels which benefit the continued operation of their functions. Whenever practicable, joint agreements between agencies shall be encouraged to expedite efficient public expenditure.

# Repeal

- 1.07 Whenever practicable, it is the policy of Whatcom County to encourage multi-purpose use of public lands, facilities and services.
- 1.08 It is the policy of Whatcom County to minimize visual and functional impacts of PUBLIC land uses through utilization of aesthetic site design which is compatible with the character of the surrounding area.

# Repeal

## F. LIGHT INDUSTRIAL PARK POLICY

### Intent Statement

The intent of the LIGHT INDUSTRIAL PARK designation is to implement the County Goal Statements which relate to a balanced and diversified economy by acknowledging those locations where transportation access and other light industrial siting requirements may be optimized. Furthermore, it is intended that development of Light Industrial Park sites will be contingent upon the statutorily required governmental agencies approval of sewer and water services; and that said sites employ aesthetic site design to maximize visual appearance and compatibility with surrounding land uses and general area character. In addition, the policy intends to encourage the overall master planning of Light Industrial Park sites.

### Policy Statement

- 1.01 Consistent with the Locational Criteria and Policy Intent Statement of the LIGHT INDUSTRIAL PARK designation, it is herein the policy of Whatcom County to designate the following areas as LIGHT INDUSTRIAL PARK on the Comprehensive Land Use Map: (1) the area situated west of the freeway, in the proximity of Grandview and Church roads and Portal Way; and (2) certain portions of the area situated south of Terrell Creek and bounded by the Kickerville, Grandview and Saftsen roads.
- 1.02 Land uses associated with the LIGHT INDUSTRIAL PARK designation should have negligible off-site impacts as provided in the zoning ordinance and may include other general services to primarily accommodate the necessities of site employees.
- 1.03 To implement the LIGHT INDUSTRIAL PARK designation, the county shall apply the Light Impact Industrial zoning district, consistent with the policies stated herein and which will foster compatibility with surrounding nonindustrial land uses.
- 1.04 To attain compatibility with surrounding nonindustrial land uses and character, it is the policy of Whatcom County to require LIGHT INDUSTRIAL PARK users to employ aesthetic site design consisting of landscaping and screening at the site periphery, as well as conservation of existing natural features. In addition, site design shall minimize encroachments (ingress and egress) onto adjacent arterials and direct traffic away from residential areas.
- 1.05 Design of LIGHT INDUSTRIAL PARK sites shall be encouraged to incorporate overall master planning and the joint use of facilities common to individual users, such as internal roadways and parking utilities, and railroad spurs. Additionally, site design shall be encouraged to employ the best available architectural design standards for structures, underground wiring and unobtrusive signage, with the intent of causing said sites to become aesthetic, as well as economic assets to Whatcom County.

# Repeal

- 1.06 Development of LIGHT INDUSTRIAL PARK sites shall be contingent upon the provision of a full range of services, including statutorily required governmental agency's approval of sewer and water services, and police and fire protection. When practicable, industries situated within such areas shall be encouraged to cooperate in the construction and use of those services common to their respective operations.

# Repeal

## G. HEAVY IMPACT INDUSTRIAL

### Intent Statement

The underlying purpose of the HEAVY IMPACT INDUSTRIAL designation is to supply enough vacant land to meet the demand for heavy industrial manufacturing uses which may be anticipated during the planning period. Additionally, it is the purpose of this designation to define expected levels of industrial performance. Moreover, it is the intent of this designation to provide the opportunity for citizens of Whatcom County to endorse a diversified economic base; but, at the same time, to maintain an acceptable balance between the interests of the private sector and the impacts to the cultural aspects (employment, population, and the physical, social and economic environment) of Whatcom County.

### Policy Statement

- 1.01 In acknowledgement of the past commitments in the Cherry Point Industrial Area, it is herein the policy of Whatcom County to designate the area bounded by the Koehn, Grandview, Kickerville, Rainbow, Lake Terrell and Slater roads as HEAVY IMPACT INDUSTRIAL. Implementation of this policy shall be accomplished by amending the Comprehensive Plan Land Use Map to HEAVY IMPACT INDUSTRIAL and by applying the Heavy Impact Industrial zone district within the designated area.
- 1.02 It shall be the policy of Whatcom County to monitor the vacant industrial property to assure a sufficient supply for the anticipated future demands.
- 1.03 It shall be the policy of Whatcom County to evaluate the short- and long-range impacts to existing public facility, utility and transportation systems resulting from the proposed development of major industrial land uses. If it is determined that major industrial development will cause financial and physical impacts that exceed the scheduled capital improvement programs of various systems, Whatcom County shall request the industrial users to financially participate in the marginal costs of upgrading such systems.
- 1.04 It shall be the policy of Whatcom County to encourage the monitoring of pollution control and nuisance abatement technologies by the appropriate governmental authority, such as the Northwest Air Pollution Authority, the Department of Ecology and the Environmental Protection Agency. Whatcom County shall assure that industrial location and design will include consideration of other pollutant sources and environmentally fragile areas in the vicinity. The location, development and operation of industries should be such as to minimize pollution of all forms and its impact upon other areas.
- 1.05 To attain compatibility with surrounding nonindustrial land use designations and to minimize heavy industrial off-site impacts, it is the policy of Whatcom County to require industrial users to provide a buffer which is located within the designated HEAVY IMPACT INDUSTRIAL area and which adjoins said nonindustrial land use designations.

As a means of protecting the existing and planned residential uses in the Point Whitehorn area from detrimental environmental and visual impacts generated from the Heavy Impact Industrial area, a 660-foot buffer strip shall be established. Said buffer shall be situated adjacent to and south

# Repeal

of Grandview Road between Jackson Road and Koehn Road; adjacent to and east of Koehn Road between Grandview Road and Brown Road; and adjacent to the east of the eastern property line of tax lots 2.27 and 2.28 between Brown Road and the shoreline. This buffer strip may be utilized for security or protective uses, parking, or the open space requirements of the Heavy Impact Industrial zone district. Land within the buffer strip which is not required for the above uses and is currently covered with natural vegetative species shall not be cleared, logged or altered in any manner which would reduce the natural screening characteristics of said buffer.

- 1.06 In recognition of the desirable natural features of deep water accessibility and large contiguous upland areas, it shall be the policy of Whatcom County to emphasize development of public and private multi-purpose ocean cargo transfer terminal facilities in the Heavy Impact Industrial area, and further that such facilities, as well as other proposed water dependent and industrial uses, be consistent with the policies and regulations of the Whatcom County Shoreline Master Program.

# Repeal

## H. COMMUNITY FACILITIES AND UTILITIES

### Intent Statement

One of the most important factors in comprehensive planning is the relationship between land use and the provision of public services. Proportionate with the increase in land use density and attendant population levels is the increase in demand for services, such as efficient sewer and water systems, functional transportation networks, adequate school and park systems, and capable fire and police protective services. As growth occurs in "urban fringe" and rural areas, local governments have been typically confronted with service issues that can be summarized as follows:

- . What governmental jurisdiction should provide the demanded services?
- . What is the difference between urban and nonurban services, and where do urban services stop and nonurban services begin?
- . Under what conditions should urban and nonurban services be provided?
- . What services can be economically provided to both city and county jurisdictions by a single service purveyor?

It is the intent of the following policies to define Whatcom County's role and responsibility concerning the above issues and to further ensure that a beneficial balance exists between the supply and demand for services, as well as encourage the cooperation among municipalities, special districts, and water associations in the planning and provision of public services.

### Policy Statement

- 1.01 It is herein the policy of Whatcom County to cooperate and coordinate with the City of Ferndale, Public Utility District No. 1, Water and Sewer District No. 8, Whatcom County Fire District No. 7, Ferndale, Blaine and Meridian School Districts, and the State of Washington in planning Subarea service systems.
- 1.02 As described in the URBAN RESERVE policies, land areas inside the URBAN RESERVE designation are intended for urban-type densities and shall be provided with a full range of urban services including sewer and water, fire and police protection, urban transportation standards and drainage systems. Furthermore, the City of Ferndale is designated as the primary service authority for said area.
- 1.03 Land situated outside the URBAN RESERVE area are planned for nonurban land use densities. Whatcom County shall be the primary purveyor of services to these areas which shall include transportation and drainage improvements, parks and recreation facilities, sheriff protection, fire protection through District No. 7, solid waste management, and library services. Furthermore, the County Public Works Department shall amend the Engineering Design Standards and Specifications to reflect specific nonurban transportation and drainage standards.
- 1.04 Whatcom County shall discourage the proliferation of new sewer and water districts (junior taxing districts) in the Subarea. Sewage disposal to nonurban uses shall be accomplished through on-site methods. Water service



# Repeal

shall be provided either through wells, City of Ferndale, including the area within the Residential Rural designation, Whatcom County, PUD #1 or existing water associations.

- 1.05 Whatcom County shall continue to recognize Puget Sound Power and Light and Cascade Natural Gas as the primary energy purveyors in the Subarea; however, the county encourages the use of alternative energy systems for residential, commercial, industrial and public land uses.
- 1.06 As enabled through the County Services Act, Whatcom County shall be designated as the primary service authority for the provision of public sewer and potable water to the Cherry Point and Grandview Road industrial areas. To accomplish such, the county is encouraged to undertake those actions deemed necessary to determine the alternative infrastructure systems and associated cost, as well as the inter-agency contractual agreements for the provision of shared services. The Public Works Department shall submit recommendations to the County Council to revise the Whatcom County Comprehensive Sewer and Water Plan to reflect the county's intention of providing future services to the Cherry Point and Grandview industrial areas.

If Whatcom County does not exercise the policy stated above, the prerogative of furnishing services to the Cherry Point and Grandview Light Industrial Park areas and the Grandview/I-5 Interchange commercial use area shall, subject to County Council approval, revert to other service entities including the City of Ferndale, Birch Bay Water District No. 8, or such other agencies as may be organized for this purpose.

# Repeal

## I. TRANSPORTATION/CIRCULATION POLICY

### Intent Statement

Transportation/Circulation is one of the key elements in comprehensive land use planning because the changes in land use density and population levels, occurring as a result of the planning process, are often reflected in a demand for an increased level of service. Thus, it is a purpose of Whatcom County to promote a coordinated transportation system which is appropriate in its intended function; that is to complement the land use density and population levels of the various areas in the Cherry Point-Ferndale Subarea. It is the intent of the following policies to ensure that land use and transportation planning mutually support the efficient and safe movement of people and goods while optimizing public investments in the existing circulation system. Furthermore, it is the intent to move toward the attainment of the Whatcom County Goal Statements with respect to transportation planning.

### Policy Statement

1.01 It is herein the policy of Whatcom County to cooperate and coordinate with the City of Ferndale and the State of Washington in the planning of an adequate transportation system in the Cherry Point-Ferndale Subarea. The City of Ferndale shall be consulted for input into a change in road classification or the proposed construction of a new road which traverses an area within the Ferndale city limits.

1.02 It shall be county policy to implement the road classification plan as designated on the Comprehensive Plan Map through the development of a Transportation Improvement Program which shall support the policies of the Comprehensive Plan.

A change in road classification or proposed construction of a new road shall be programmed only after land use studies have shown the need for increased carrying capacity. Such changes shall be reviewed by the Whatcom County Planning Department pursuant to RCW 36.70.530 and RCW 36.70.540.

1.03 It shall be the policy of Whatcom County to evaluate the short and long-range impacts to existing county roads resulting from proposed developments. If it is determined that a proposed development will cause financial and physical impacts that exceed the scheduled transportation improvements, Whatcom County shall request the developer to financially participate in upgrading the transportation/circulation system.

1.04 It shall be the policy of Whatcom County to designate specific truck routes into commercial and industrial areas to minimize the conflict between truck and automobile traffic.

1.05 It is herein the policy of Whatcom County to promote and encourage the availability of public transit as demand increases in the Cherry Point-Ferndale Subarea. The public transit system shall be designed to encourage the use of said system by providing frequent and convenient access points, and by integrating transit services with other transportation modes, such as bus systems, park and ride lots for automobiles and bicycles, and bus, railroad and airline terminal facilities.

# Repeal

Any major program change in the Transportation Improvement Program with respect to the circulation system shall provide accommodations for transit when warranted by the level and location of ridership.

- 1.06 It shall be the policy of Whatcom County to make every effort to preserve mature trees and unique wildlife habitats and other elements of the natural environment during the design and construction of road improvement projects. Where disruption of the natural environment is unavoidable, special techniques, including rounded slopes, erosion control, reseeding and revegetation shall be employed to return roadsides to their natural state.
- 1.07 It shall be county policy to include bikeways and pedestrian walkways as an integral part of the transportation system. Bikeways and pedestrian ways shall be provided in new developments where warranted. Bikeways shall be provided to link residential areas, shopping areas, recreational areas and educational facilities. Whenever practical, bikeways proposed in new developments shall connect with the planned bikeways in the Whatcom County Trails Plan.
- 1.08 It shall be the policy of Whatcom County to discourage driveway cuts on all street classifications higher than local access streets; to develop access control plans for classifications higher than neighborhood collector streets; and to require new developments to minimize the number of access points to road classifications higher than neighborhood collector streets.
- 1.09 It shall be the policy of Whatcom County to discourage through traffic on neighborhood collector, local access and minor access streets.
- 1.10 It shall be the policy of Whatcom County to encourage the use of noise buffers and visual screens between high volume transportation routes and residential areas.
- 1.11 It shall be the policy of Whatcom County to encourage major public and private developments to be easily accessible to existing arterials and public transit.

# Repeal

## J. ENVIRONMENTAL POLICIES

### Intent Statement

The intent of the following policies is to minimize detrimental impacts to human life and property, conserve critical wildlife habitats in recognition of their irreplaceable character, manage nonrenewable natural resource areas in a manner which will permit future utilization, and maintain and enhance environmental quality with reference to air, water and noise.

### Policy Statement

- 1.01 It is the policy of Whatcom County to encourage utilization of unstable slopes for very low density development or preferably as open space. If used for developmental purposes, structures shall be subject to safety confirmation as established by a qualified geological engineer.
- 1.02 It is the policy of Whatcom County to encourage utilization of the Nooksack River 100-year floodplain for agriculture purposes and to encourage the use of 100-year floodplains associated with stream corridors as open space.
- 1.03 Whatcom County shall encourage very low densities in areas of known mineral and nonmineral resource occurrence with the intent of retaining future access and utilization options. Surface extraction shall be dependent upon compatibility with surrounding land uses, be discouraged in areas overlain by Prime Farmlands, and be accomplished by a reclamation plan which is consistent with state regulations (RCW 78.44).
- 1.04 It is the policy of Whatcom County to conserve and retain Prime Farmlands and Farmlands of Statewide Importance by encouraging agricultural or very low density residential land uses in such areas.
- 1.05 It is the policy of Whatcom County to maintain and/or enhance surface water quality consistent with Federal and State standards by development of appropriate regulations or ordinances to carry out the intent of this policy. Furthermore, wetlands such as swamps, bogs, marshes and ponds shall be recognized for their capacity as natural catchment basins.
- 1.06 It is the policy of Whatcom County to promote continued groundwater quality.
- 1.07 It is the policy of Whatcom County to avoid the wasteful or destructive use of environmentally fragile areas or critical wildlife habitats. The identification of critical wildlife habitats will be pursuant to procedures set forth in the State Environmental Policy Act WAC 197-10-177.
- 1.08 It is the policy of Whatcom County to encourage property owners to utilize the provisions of RCW 84.34 for the preservation of open space and the preservation of environmentally fragile areas such as critical wildlife habitats and wetlands as described in the policies of this section.
- 1.09 Pursuant to the Federal Clean Air Act, it is the policy of Whatcom County to encourage pollution abatement with the intent of maintaining and/or enhancing air quality through the coordination of land use proposals and plans with Northwest Air Pollution Authority, as well as other environmental agencies.

# Repeal

- 1.10 It is the policy of Whatcom County to implement such rules, regulations or ordinances as are required by state law to minimize noise impacts.
- 1.11 It is the policy of Whatcom County pursuant to the State of Washington State Environmental Policy Act (WAC 197-10-177) to identify and designate the environmentally sensitive areas, the intent of which is to establish uses which should no longer be considered as categorical exemptions within such areas as provided in the County's Environmental Policy Guideline Ordinance. The Whatcom County Environmental Review Committee is herein directed to prepare a map clearly indicating the location intent and selection of exemption of the Environmentally Sensitive Areas which shall be considered as recommendations for adoption (pursuant to WAC 197-10-177), as part of the Whatcom County's Environmental Policy Guidelines Ordinance.

# Repeal

## K. ECONOMIC POLICIES

### Intent Statement

The intent of the following policy is to assure that economic values are given appropriate consideration along with other goals so that Whatcom County can attempt to fulfill the economic requirements of present and future generations of Whatcom County citizens. The Goal Statements of this comprehensive plan clearly indicate that future land use should recognize economic concerns in addition to environmental and social concerns to provide a balanced and diversified economy. It is therefore the policy of Whatcom County to establish a balance in its consideration of environmental and economic matters.

### Policy Statement

- 1.01 It is the policy of Whatcom County to consider the positive and negative economic impacts in land use decisions on the general welfare of the citizens of the county.
- 1.02 It is the policy of Whatcom County to strengthen and stabilize the tax base through economic development.
- 1.03 It is the policy of Whatcom County to consider economic impacts, along with other considerations, of measures which implement this comprehensive land use plan.
- 1.04 It is the policy of Whatcom County to promote the wise use of both natural and man-made resources over the long run as well as in the immediate future.
- 1.05 It is the policy of Whatcom County to ensure that all county land use plans and zoning ordinances are considered in terms of their enhancement of the economy of the area and region, and are calculated to:
  - (a) Foster and promote the general welfare;
  - (b) To create and maintain conditions under which man and nature can exist in productive harmony; and
  - (c) Fulfill the social, economic, and other requirements of present and future generations of Whatcom County citizens.

Repeal

comprehensive  
plan amendments

# Repeal

## VII. COMPREHENSIVE PLAN AMENDMENTS

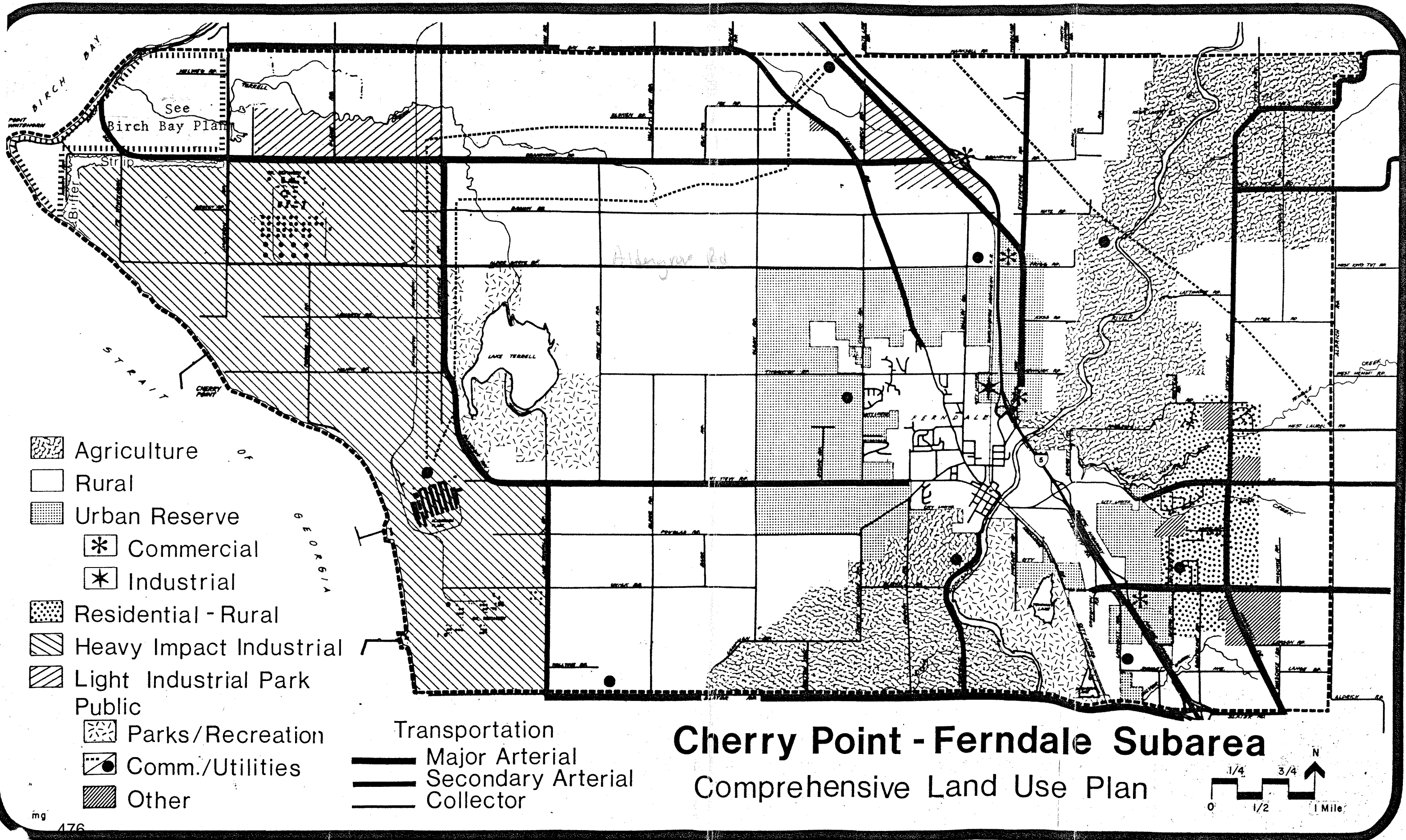
The Cherry Point-Ferndale Subarea Plan is a policy document that is used to guide the land use decisions affecting both the private and public sector of the Subarea. For the plan to function as an effective decision-making document, it must be flexible enough to weather changes in public attitudes, developmental technologies, economic forces and legislative policy.

The plan envisions two general types of plan amendments. The first type is a review conducted every five years. This review should re-examine the entire plan, including a re-evaluation of goals, updates of land related elements, and the reaffirmation of land use policies and proposals. This review is the responsibility of the Whatcom County Planning Commission, the Planning Department staff and the people of the Subarea.

The second type of amendment is that proposed and initiated by the private sector. The land uses illustrated on the Land Use Plan Map are the result of the application of the Plan's goals and policies. However, it is reasonable to assume that the private sector may introduce land use proposals that conflict with the Plan Map or policies of the Plan itself. In such instances, the private individual may entertain an amendment to the Plan. Private petitions for amendment of the Comprehensive Plan addressed to either the Planning Commission or the County Council shall be processed in accordance with statutory procedure for adoption or amendment of comprehensive plans. In applying for a particular amendment to the Plan or Plan Map, the private sector shall conform to the following criteria:

1. The amendment request shall conform with the goals of the Subarea plan;
2. The amendment request shall be compatible with the existing and planned surrounding land uses;
3. The amendment request shall not result in unmitigated detrimental impacts to existing transportation systems;
4. The amendment request shall not place uncompensated burdens upon existing or planned service capabilities; and
5. The amendment request shall demonstrate a land usage need which is consistent with the environmental and economic policies of this plan.





## **WHATCOM COUNTY PLANNING COMMISSION**

### **Repeal the Cherry Point Ferndale Subarea Plan and Delete a Reference to the Subarea Plan in the Whatcom County Comprehensive Plan**

#### **FINDINGS OF FACT AND REASONS FOR ACTION**

1. The subject amendments include:
  - a. Deleting text in the Whatcom County Comprehensive Plan relating to the Cherry Point Ferndale Subarea Plan.
  - b. Repealing the Cherry Point Ferndale Subarea Plan (1981).
2. Notice of the subject amendments was submitted to the Washington State Department of Commerce on April 3, 2018.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2018.
4. Notice of the Planning Commission hearings for the subject amendments was posted on the County website on June 26, 2018 and October 18, 2021.
5. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on June 29, 2018 and October 15, 2021.
6. Notice of the Planning Commission hearing was sent to the County's e-mail list on July 3, 2018 and October 18, 2021.
7. The Planning Commission held public hearings on the subject amendments on July 12, 2018 and October 28, 2021.
8. Pursuant to WCC 22.10.060(1), in order to approve the proposed comprehensive plan amendments the County must find all of the following:
  - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.

- b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
- c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
  - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
  - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
  - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
- d. The amendment does not include or facilitate spot zoning.

### **Growth Management Act**

- 9. The Growth Management Act (GMA) allows, but does not require, a county to adopt subarea plans under RCW 36.70A.080 ("Comprehensive plans – Optional elements").
- 10. However, the GMA requires that subarea plans must be consistent with a county's comprehensive plan. Specifically, RCW 36.70A.080(2) states: "A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan."
- 11. The Cherry Point Ferndale Subarea Plan was adopted in 1981, prior to enactment of the GMA in 1990. The Whatcom County Comprehensive Plan was adopted in 1997 and subsequently amended from time to time.

### **County-Wide Planning Policies**

- 12. The County-Wide Planning Policies do not require the County to retain old subarea plans.

### **Interlocal Agreements**

13. There are no interlocal agreements relating to the Cherry Point Ferndale Subarea Plan.

### **Further Studies/Changed Conditions**

14. The GMA, adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs). The 1981 Cherry Point Ferndale Subarea Plan does not address UGAs.
15. The GMA was amended in 1997 to include criteria for limited areas of more intensive rural development (LAMIRDs). The 1981 Cherry Point Ferndale Subarea Plan does not address LAMIRDs.
16. The Whatcom County Comprehensive Plan utilizes a planning horizon of 2036. The 1981 Cherry Point Ferndale Subarea Plan utilized a 15-year planning period (which ended in 1996).
17. The Whatcom County Comprehensive Plan contains population projections through the year 2036. The 1981 Cherry Point Ferndale Subarea Plan contains population forecasts through the year 2000.
18. The 1981 Cherry Point Ferndale Subarea Plan contains density policies that are not consistent with the Whatcom County Zoning Code.
19. The 1981 Cherry Point Ferndale Subarea Plan is inconsistent with the Whatcom County Comprehensive Plan. Specifically, the Subarea Plan does not address UGAs, contains different land use designations, is inconsistent with the Comprehensive Plan's rural element, has a different planning period, and contains different population projections.
20. Changed conditions including enactment of the GMA, adoption of the Whatcom County Comprehensive Plan, and the passage of time warrant repealing the 1981 Cherry Point Ferndale Subarea Plan.

### **Public Interest**

21. Repealing the 1981 Cherry Point Ferndale Subarea Plan will serve the public interest by removing a plan that is inconsistent with the Whatcom County Comprehensive Plan. Removing a reference to the Subarea Plan in the Whatcom County Comprehensive Plan is consistent with repealing the Subarea Plan.

### **Spot Zoning**

22. The subject proposal does not involve rezoning property.

### **CONCLUSION**

The subject comprehensive plan amendments, which include repealing the Subarea Plan, are consistent with the approval criteria of WCC 22.10.060.

### **RECOMMENDATION**

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approving Exhibit A, Whatcom County Comprehensive Plan Amendment; and
2. Repealing Exhibit B, the Cherry Point Ferndale Subarea Plan.

#### WHATCOM COUNTY PLANNING COMMISSION



Kelvin Barton, Chair

  
Tammy Axlund, Secretary

10-28-2021  
Date

10/28/2021  
Date

Commissioners voted to recommend approval on October 28, 2021 (vote was 7-1 with 1 member absent). Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Kimberley Lund, Jon Maberry, Natalie McClendon, and Dominic Mocerì.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-039

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<b>File ID:</b>	AB2022-039	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	01/07/2022	<b>Entered by:</b>	EMiranda@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance to temporarily close Gulf Road to Motorized Vehicular Traffic

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council

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**Attachments:** Staff memo, Proposed ordinance



**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings**  
Director



**James P. Karcher, P. E.**  
County Engineer  
322 N. Commercial Street, Ste 301  
Bellingham, WA 98225-4042  
Phone: (360) 715-7450  
Fax: (360) 715-7451

**M E M O R A N D U M**

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

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

**From:** James P. Karcher, P.E., County Engineer *JPK*  
Douglas W. Ranney, P.E., Engineering Manager *DWR*

**Date:** January 25, 2022

**Re:** Ordinance to temporarily close Gulf Road to Motorized Vehicular Traffic

---

**Requested Action**

Consideration of an ordinance to temporarily close a portion of Gulf Road, at approximately 150 feet south of Henry Road, to motorized vehicular traffic.

**Background and Purpose**

Whatcom County Public Works received a request from Pacific International Holdings, LLC (PIH) to temporarily close a portion of Gulf Road south of Henry Road. The request from PIH states that illegal dumping, abandoned vehicles, alcohol and drug use, the discharging of firearms, unauthorized fires, destruction of private property and trespass along Whatcom County rights-of-way and onto private property occur in this area.

After receipt of this request, Public Works facilitated a Public Works & Health Committee discussion around this topic. PIH Vice President of Project Development, Mr. Skip Sahlin, presented the request and explained to Committee the need for the closure. The Committee meeting concluded with statements that PIH, Public Works and the Executive's office would work together to understand the request and work out additional details for long term use of the area, access and parking. This coordination work has occurred and this ordinance is the result.

**Information**

The Public Works Department requests that the County Council review, introduce, hold a public hearing and vote on adoption of the proposed ordinance to temporarily close Gulf Road to motorized vehicular traffic.

Please contact Douglas Ranney, Engineering Services Manager at extension 6255 with any questions regarding this ordinance.

SPONSORED BY: \_\_\_\_\_

PROPOSED BY: Public Works

INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

ORDERING THE TEMPORARY CLOSURE OF GULF ROAD SOUTH OF HENRY ROAD

WHEREAS, the Whatcom County Council has been requested by Pacific International Holdings to close to motorized vehicular traffic a portion of Gulf Road south of Henry Road (a "County right-of-way"), as depicted and described on attached Exhibits A and B, for public health, safety, security, and liability reasons; and

WHEREAS, the closure is requested due to pervasive dumping, abandoned vehicles, alcohol and drug use, the discharging of firearms, unauthorized fires, destruction of private property and trespass (hereinafter, "illegal activities"), having taken place along that portion of County's right-of-way and on adjoining vacant private properties for many years; and

WHEREAS, the increased frequency of illegal activities on the County's right of way and on the adjoining vacant private properties create significant threats to public health, safety, environmental damage and liability on both the County right-of-way and adjoining properties; and

WHEREAS, the Whatcom County Sheriff's Office has dispatched Sheriff's Deputies to the area on numerous occasions over the years at taxpayers' expense to respond to the illegal activities and has indicated support for a closure to conserve Sheriff's Office resources; and

WHEREAS, Whatcom County Fire District #7 has been forced to utilize public resources to respond to fires set on both the County right-of-way and by trespassers on private adjoining properties; and

WHEREAS, the affected adjacent property owners have indicated support for the closure; and

WHEREAS, law enforcement, private security and adjacent property owners' efforts to stop the illegal activities have been ineffective; and

WHEREAS, the County right-of-way dead ends and there are no residential structures along the County right-of-way, and

WHEREAS, the closure of a portion of the County's right-of-way will not eliminate pedestrian public access to the County right-of-way, but will restrict motorized vehicular traffic to emergency vehicles and authorized personnel; and

WHEREAS, Pacific International Holdings will install accurate signage notifying the public that the property not directly on the County right-of-way is private and closed to the public and will install a gate system to effectuate the closure of the road to motorized vehicular traffic; and



WHEREAS, Pacific International Holdings shall bear the responsibility for obtaining permits, constructing the gate system, coordinating access for emergency vehicles, authorized personnel and affected adjacent property owners, and for removing the gate system at the end of the closure; and

WHEREAS, Whatcom County shall bear the responsibility for maintaining the County's infrastructure, namely Gulf Road, any easements and appurtenant structures within the County right-of-way, and Pacific International Holdings shall ensure the County has access to that portion of Gulf Road subject to the closure to perform any required maintenance or repair; and

WHEREAS, Pacific International Holdings shall bear the responsibility of maintaining the installed gate system and signage associated with the closure of Gulf Road. The closure sign shall read: "Road Closed to Motorized Vehicular Traffic;" and

WHEREAS, if the gate system becomes deficient, Pacific International Holdings shall have thirty (30) days to repair and cure the deficiency. If the gate system deficiency is not repaired during that timeframe, the County may remove the gate system and signage after the County Council takes action to open the road to motorized vehicular traffic; and

WHEREAS, the gate system must be designed and installed consistent with the specifications for existing gates currently constructed at Cherry Point that allow for industrial sized loads; and

WHEREAS, the gate system must be designed and installed to allow access to emergency service vehicles including a Fire District-approved lockbox; and

WHEREAS, authorization for installation of the gate system is contingent upon issuance of all required permits including but not limited to a land disturbance permit, a revocable encroachment permit, and a Fire Marshall permit; and

WHEREAS, the closure of Gulf Road to motorized vehicular traffic is established in perpetuity but may be revoked by the County Council at any time for no cause upon taking action to open the road to motorized vehicular traffic. Upon revocation, the County shall provide written notice to Pacific International Holdings which shall have ninety (90) days thereafter to remove the gate system; and

WHEREAS, nothing herein shall be construed to obviate or limit the right of Pacific International Holdings at a future date to petition for vacation under RCW 36.87.130 of the portion of Gulf Road subject to this Ordinance; and

WHEREAS, the County Council held a public hearing on the proposed closure on \_\_\_\_\_, 2021, and is authorized to close the road according to the provisions of RCW 36.32.120.

NOW THEREFORE BE IT ORDAINED by the Whatcom County Council that the Public Works Department of Whatcom County is hereby directed, subject to further consideration for re-establishing access for adjoining property owners, to close a portion of Gulf Road south of Henry Road to motorized vehicular traffic.

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

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Council Clerk

\_\_\_\_\_  
Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

\_\_\_\_\_  
Approved Via Email-CQ/EM  
Senior Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
County Executive

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

## **EXHIBIT “A”**

### **GULF ROAD CLOSURE LEGAL DESCRIPTION**

THAT PORTION OF THE GULF ROAD (COUNTY ROAD NO. 340) RIGHT OF WAY SITUATED IN NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 1 EAST OF W.M., LYING SOUTH OF THE SOUTH MARGIN OF HENRY ROAD RIGHT OF WAY AND WEST OF THE PORTION OF VACATED GULF ROAD PER AUDITOR’S FILE NO. 940510068.

THE NORTH/SOUTH PORTION OF GULF ROAD RIGHT OF WAY IS 50 FEET WIDE FROM HENRY ROAD TO THE INTERSECTION OF THE STRAIT OF GEORGIA.

THE WEST/EAST PORTION OF GULF ROAD RIGHT OF WAY PARALLEL WITH THE SHORE OF THE STRAIT OF GEORGIA IS 40 FEET WIDE AS ESTABLISHED BY DEED PER AUDITOR’S FILE NO 510394. CENTERLINE OF THIS 40 FOOT WIDE RIGHT OF WAY WAS ESTABLISHED BY ASBUILT LOCATION OF EXISTING ROADWAY.

CONTAINING 148,742 SQUARE FEET (3.4 ACRES)-MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SEE ATTACHED EXHIBIT “B”

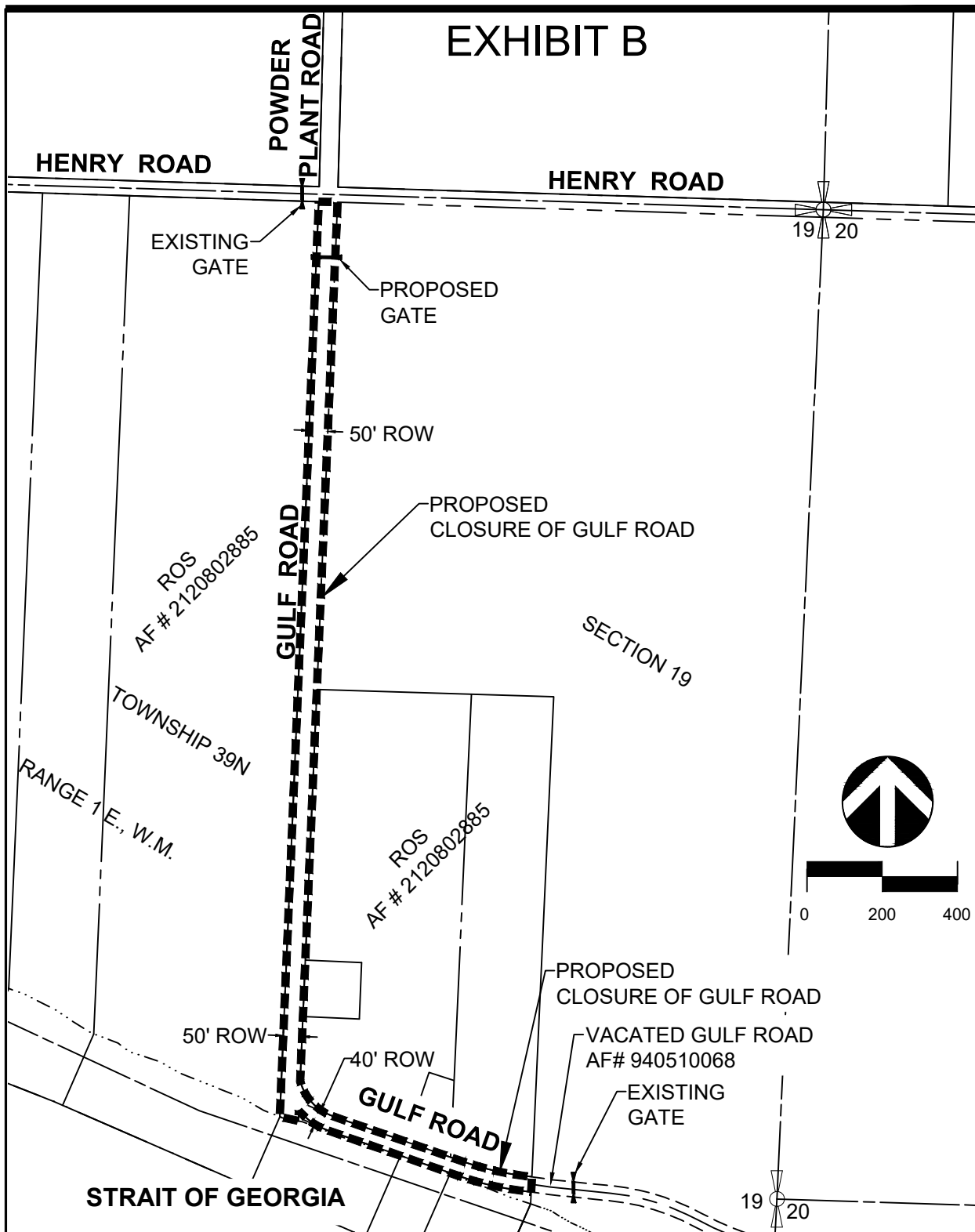


EXHIBIT B



**DAVID EVANS  
AND ASSOCIATES INC.**  
1620 W. Marine View Drive, Suite 200  
Everett Washington 98201  
Phone: 425.259.4099

**GULF ROAD  
CLOSURE  
EXHIBIT MAP**

DATE: 11-8-2021 DESIGN: GJLA

SV-EM-10-PIT10008

FILE: PIT10008 / DRAWN: GJLA

Gjla 11/08/21 1:14pm - P:\PIT100000008\0400CAD\SV\SHEETS\sv-em-10-piti0008-Gulf Road VacationI.dwg



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-040

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<b>File ID:</b>	AB2022-040	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	01/07/2022	<b>Entered by:</b>	EMiranda@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance for the legal establishment of a speed limit for a portion of Nulle Road

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council

---

**Attachments:** Staff memo, Proposed ordinance, Vicinity map



## Memorandum

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

**Through:** Jon Hutchings, Director *JH*

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

**Date:** December 20, 2021

**Re:** **Ordinance for the Legal Establishment of a Speed Limit for a Portion of  
Nulle Road**

---

### Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to for a 30 mph speed limit on Nulle Road from Summerland Road to East Lake Samish Road.

### Background and Purpose

During a review of speed limits it was discovered that Nulle Road is currently posted at 30 mph from Summerland Road to East Lake Samish Road, but there is no ordinance legally establishing this and Ordinance 1987-027 established this speed limit as 40 mph. Public Works feels 30 mph is an appropriate speed limit for this section of road, but will leave the 40 mph speed limit in place for Nulle Road from East Lake Samish to Pacific Highway.

### Information

This ordinance will allow for the installation of speed limit signs and is necessary to comply with RCW 46.61.415 to establish speed limits on certain County roads.

Please contact Douglas Ranney II, P.E., Engineering Services Manager at extension 6255 with any questions regarding this ordinance.

**ORDINANCE NO. \_\_\_\_\_**

**LEGAL ESTABLISHMENT OF A SPEED LIMIT FOR A PORTION OF NULLE ROAD**

**WHEREAS**, the Whatcom County Council is authorized under RCW 46.61.415 to establish speed limits on certain County Roads; and

**WHEREAS**, the speed limit on Nulle Rd is currently posted at 30 mph from Summerland Road to East Lake Samish Road; and

**WHEREAS**, the County Engineer has agreed that it is necessary to formally establish the speed limit; and

**NOW, THEREFOR, BE IT ORDAINED** by the Whatcom County Council that the speed limit be established as follows:

30 mph on Nulle Road, from Summerland Road to East Lake Samish Road, located in Section 36, Township 37 North, Range 3 East, W.M.; and

40 mph on Nulle Road, from East Lake Samish Road to Pacific Highway, located in Section 36, Township 37 North, Range 3 East, W.M.

**BE IT FURTHER ORDAINED**, by the Whatcom County Council that Whatcom County Code Section 10.04.040 be amended as follows:

**10.04.040 Thirty miles per hour.**

NULLE ROAD. Nulle Road from Summerland Road to East Lake Samish Road located in Section 36, Township 37 North, Range 3 East, W.M.

**10.04.060 Forty miles per hour.**

NULLE ROAD. Nulle Road from East Lake Samish Road to Pacific Highway located in Section 36, Township 37 North, Range 3 East, W.M.

**~~10.04.060 Forty miles per hour.~~**

~~NULLE ROAD. Nulle Road from Summerland Road to Pacific Highway.~~

**BE IT FURTHER ORDAINED**, that the County Engineer is hereby directed to install the appropriate signs and the Whatcom County Sheriff and Washington State Patrol be

1 notified by a copy of this ordinance.  
2

3 **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.  
4

5  
6 ATTEST:  
7

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

8  
9 \_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
, Council Chair

10  
11  
12 APPROVED AS TO FORM:  
13

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

14  
15 Approved Via Email CQ/JA 12/20/2021  
16 Christopher Quinn,  
17 Sr. Deputy Prosecuting Attorney,  
18 Civil Division  
19  
20

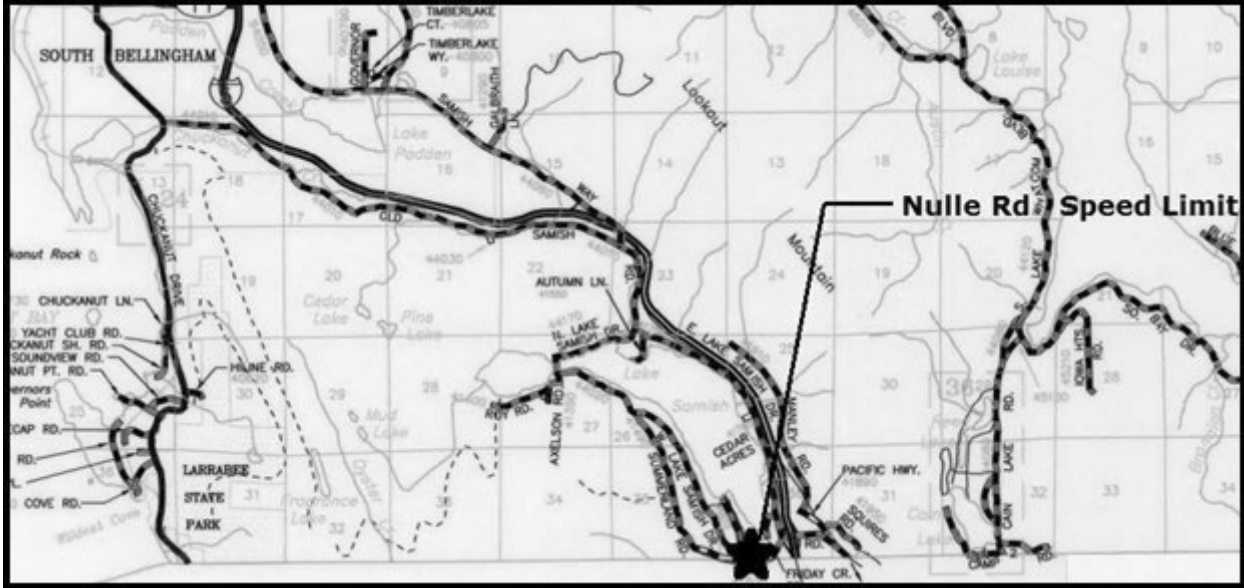
\_\_\_\_\_  
Satpal Singh Sidhu, County Executive

( ) Approved ( ) Denied

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



## Vicinity Map – Legal Establishment of a Speed Limit for a Portion of Nulle Road





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-041

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<b>File ID:</b>	AB2022-041	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	01/07/2022	<b>Entered by:</b>	EMiranda@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance to install a stop sign on Northwest Drive

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council

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**Attachments:** Staff memo, Proposed ordinance, Traffic study



## Memorandum

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

**Through:** Jon Hutchings, Director *JH*

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

**Date:** December 20, 2021

**Re:** **Ordinance - Installation of a Stop Sign on Northwest Drive**

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### Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to install a stop sign southbound on Northwest Drive at the intersection with West Pole Road.

### Background and Purpose

The County Engineer has determined that at this location a road user, after stopping, cannot see conflicting traffic and is not able to negotiate the intersection unless conflicting cross traffic is also required to stop. This is due to substandard sight distance for westbound traffic on W. Pole Road to make a left turn movement to southbound Northwest Drive and will require stop control.

### Information

This ordinance will allow for the installation of a stop sign and is necessary to comply with RCW 36.32.120 *Powers of legislative authorities* and 46.61.200 *Stop intersections other than arterials may be designated* to install traffic control signs.

Please contact Douglas Ranney II, Engineering Services Manager at extension 6255 if you have any questions regarding this ordinance.

ORDINANCE NO. \_\_\_\_\_

**INSTALLATION OF STOP SIGN ON NORTHWEST DRIVE**

**WHEREAS**, in compliance with RCW 36.32.120 and 46.61.200, it is found necessary and expedient to install traffic control signs on certain County Roads; and

**WHEREAS**, the County Engineer has determined that a road user, after stopping, cannot see conflicting traffic and is not able to negotiate the intersection unless conflicting cross traffic is also required to stop; and

**WHEREAS**, the County Engineer has agreed that it is necessary to formally establish the new stop sign; and

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that a stop sign be established for:

- 1) Southbound traffic on Northwest Drive at the intersection with West Pole Road in section 10, Township 39 North, Range 2 East, W.M.

**BE IT FURTHER ORDAINED**, by the Whatcom County Council that the following be added to the Whatcom County Code Section 10.16.1695:

<b>Road Name</b>	<b>Direction- Stopping</b>	<b>Cross Street</b>
<u>Northwest Drive</u>	<u>Southbound</u>	<u>West Pole Road</u>

**BE IT FURTHER ORDAINED**, that the County Engineer is hereby directed to install the appropriate signs and the Whatcom County Sheriff and the Washington State Patrol be notified by a copy of this ordinance.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

Approved Via Email CQ/JA 12/20/2021

Christopher Quinn,  
Sr. Deputy Prosecuting Attorney,  
Civil Division

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

(    ) Approved      (    ) Denied

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



## W. Pole Rd at Northwest Dr Traffic Study

Completed 12/8/2021



3 complaints regarding sight distance caused by cedar trees planted on the north side of W. Pole Rd and east side of Northwest Dr, one complaint from a citizen to Rodney Vandersypen on May 28<sup>th</sup>; another from Chet Zender on June 22<sup>nd</sup>; third complaint on October 28<sup>th</sup> from Rick Keller. Trees are close enough that we'd need a survey to see if they are within ROW or not.

Site visit by Jason Ardt and Owen Richey on June 25<sup>th</sup>, 2021.

Current sight distance measured 8 feet behind the stop line:

Southbound check #1 = 126 feet

Southbound check #2 = 134 feet

Minimum Sight Distance for 35 MPH roadway per Chapter 5 of Whatcom County Development Standards is 250 feet



Looking North from sight cone



Stop line could be removed and sight distance measured at 10 feet from the travelled way, but with the location of the utility pole in the northeast corner of the intersection, the sight distance would actually be worse. Also removing the stop line at a T-intersection of 2 Major Collectors and 1 Minor Collector is not advised.

Stop line relocated by Maintenance and Operations to 4 feet from the travelled way on 7/13/2021. Trees were trimmed by Enfield Farms between August and October timeframe.

Site visit by Jason Ardt October 28<sup>th</sup>, 2021.

Sight distance measured 8 feet behind the new stop line:

Southbound check #1 = 215 feet

Southbound check #2 = 215 feet

Site distance is complicated here by a lack of available Right-of-Way as north of the intersection the ROW is only 33 feet (2 rods) in width.

Not achieved with this modification:

Minimum Stopping Sight Distance of 250 feet for a 35 MPH roadway

Minimum Stopping Sight Distance of 360 feet for a 45 MPH roadway, if the 85<sup>th</sup> percentile speed of 46.6 MPH, gathered by traffic count in August of 2020, was used.

Minimum Intersection Sight Distance for 35 MPH roadway of 390 feet @ 18 feet from the travelled way.

Minimum Intersection Sight Distance for 45 MPH roadway of 500 feet @ 18 feet from the travelled way.

#### **Conclusion:**

**Neither intersection nor stopping sight distance was not achieved at this location even with the tree trimming done by the property owners, therefore it meets the Multi-Way Stop Application warrant 05(C) of the MUTCD for a location where a road user, after stopping, cannot see conflicting traffic and is not able to negotiate the intersection unless conflicting cross traffic is also required to stop.**

**Ordinance for the installation of a southbound stop sign will be pursued.**

#### **1. Stop SB traffic on Northwest Dr in addition to WB traffic on W. Pole Rd.**

**Make Intersection a Two-Way Stop – westbound and southbound**

##### **Section 2B.07 Multi-Way Stop Applications**

05 Other criteria that may be considered in an engineering study include:

C. Locations where a road user, after stopping, cannot see conflicting traffic and is not able to negotiate the intersection unless conflicting cross traffic is also required to stop

Guidance:

08 Plaques with the appropriate alternative messages of TRAFFIC FROM LEFT (RIGHT) DOES NOT STOP (W4-4Ap) or ONCOMING TRAFFIC DOES NOT STOP (W4-4bP) should be used at intersections where STOP signs control all but one approach to the intersection, unless the only non-stopped approach is from a one-way street.

Ordinance for SB Stop, Add Stop Sign with Oncoming Traffic Does Not Stop plaque to SB Northwest Dr, add Traffic From Left Does Not Stop to WB W. Pole Rd Stop Sign



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-042

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<b>File ID:</b>	AB2022-042	<b>Version:</b>	1	<b>Status:</b>	Introduced for Public Hearing
<b>File Created:</b>	01/07/2022	<b>Entered by:</b>	EMiranda@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance regarding the legal establishment of existing yield signs on county roads

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memo

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
01/25/2022	Council	INTRODUCED FOR PUBLIC HEARING	Council

---

**Attachments:** Staff memo, Proposed ordinance, Vicinity map



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  
The Honorable Members of the Whatcom County Council

**Through:** Jon Hutchings, Director *JH*

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

**Date:** December 20, 2021

**Re:** **Ordinance – Regarding the legal establishment of existing Yield Signs on County Roads**

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### Requested Action

Public Works respectfully requests that the County Council adopt the proposed ordinance to legally establish existing yield signs on certain County roads.

### Background and Purpose

During the normal course of business it was discovered that multiple yield signs on various County roads were not previously legally established by ordinance. This ordinance will legally establish those yield signs.

### Information

This ordinance will legally establish the yield signs and allow for their installation and is necessary to comply with RCW 36.32.120 *Powers of legislative authorities* and 46.61.190 *Vehicle entering stop or yield intersection* to install traffic control signs.

Please contact Douglas Ranney II, Engineering Services Manager at extension 6255 if you have any questions regarding this ordinance.

**ORDINANCE NO. \_\_\_\_\_**

**LEGAL ESTABLISHMENT OF EXISTING YIELD SIGNS ON COUNTY ROADS**

**WHEREAS**, in compliance with RCW 46.61.190 and 47.36.110, it is found necessary and expedient to install traffic control signs on certain County Roads; and

**WHEREAS**, it was found that numerous existing yield control intersections have not been established according to the legal processes prescribed by law.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that that the following be added to the Whatcom County Code Section 10.18:

10.18.070 Geneva Street.

A yield sign shall be installed on Geneva Street, southbound at Wall Street in Section 27, Township 38 North, Range 3 East, W.M.

10.18.080 Country Lane.

A yield sign shall be installed on Country Lane, eastbound at Curtis Road in Sections 9 and 16, Township 38 North, Range 2 East, W.M.

10.18.090 Jensen Road.

A yield sign shall be installed on Jensen Road, westbound at Squalicum Lake Road in Sections 18 and 19, Township 38 North, Range 3 East, W.M.

10.18.100 Holeman Avenue.

A yield sign shall be installed on Holeman Avenue, eastbound at Birch Bay Drive in Section 2, Township 39 North, Range 1 West, W.M.

10.18.105 Chuckanut Lane.

A yield sign shall be installed on Chuckanut Lane, southbound at Yacht Club Road in Section 24, Township 37 North, Range 2 East, W.M.

10.18.110 Birch Bay Lynden Road from Portal Way.

A yield sign shall be installed eastbound on the connector road at Birch Bay Lynden Road from northbound Portal Way in Sections 22 and 27, Township 40 North, Range 1 East, W.M.

10.18.115 Birch Bay Lynden Road from Portal Way.

A yield sign shall be installed westbound on the connector road at Birch Bay Lynden Road from southbound Portal Way in Sections 22 and 27, Township 40 North, Range 1 East, W.M.

1        **BE IT FURTHER ORDAINED** that the County Engineer is hereby directed to install the  
2 appropriate signs and the Whatcom County Sheriff and the Washington State Patrol be notified  
3 by a copy of this ordinance.  
4

5  
6        **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.  
7

8  
9        ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

10  
11 \_\_\_\_\_  
12 Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
, Council Chair

13  
14  
15        APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

16  
17  
18        Approved Via Email CQ/JA 12/20/2021

19 Christopher Quinn,  
20 Sr. Deputy Prosecuting Attorney,  
21 Civil Division

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

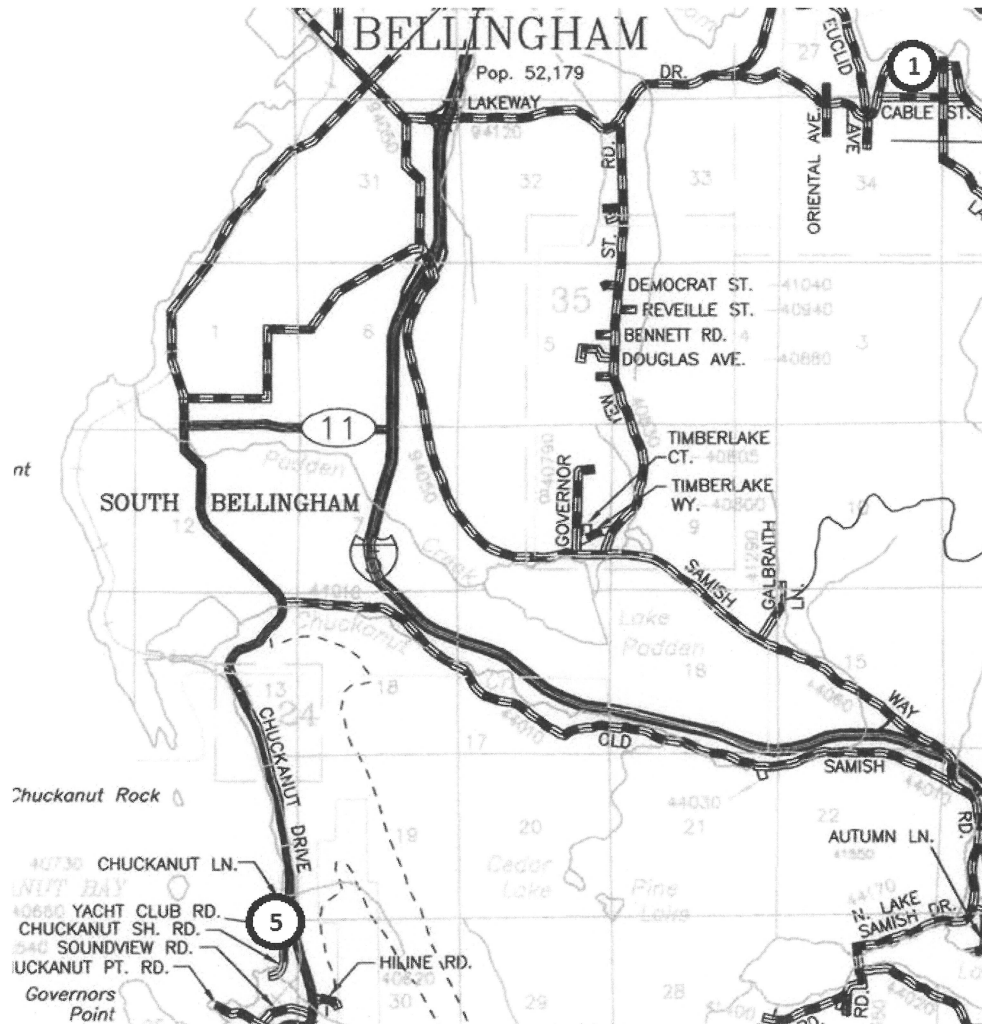
(    ) Approved        (    ) Denied

22  
23        Date Signed: \_\_\_\_\_

## Vicinity Maps

1 Geneva St southbound at Wall St

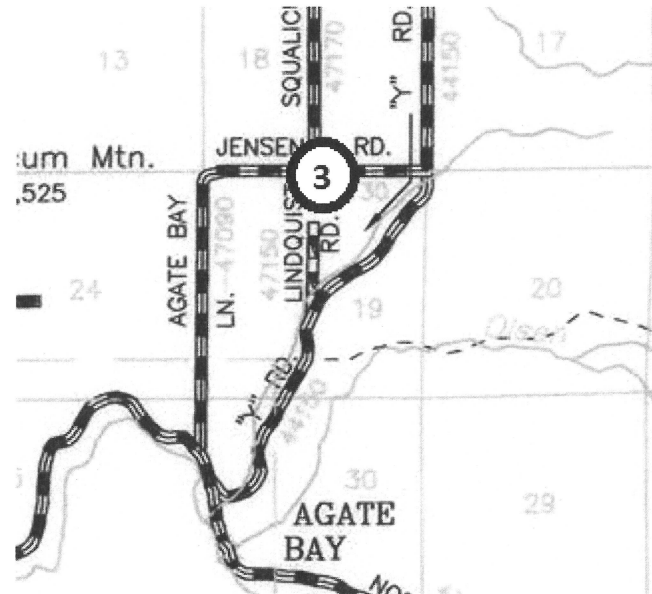
5 Chuckanut Ln southbound at Yacht Club Rd



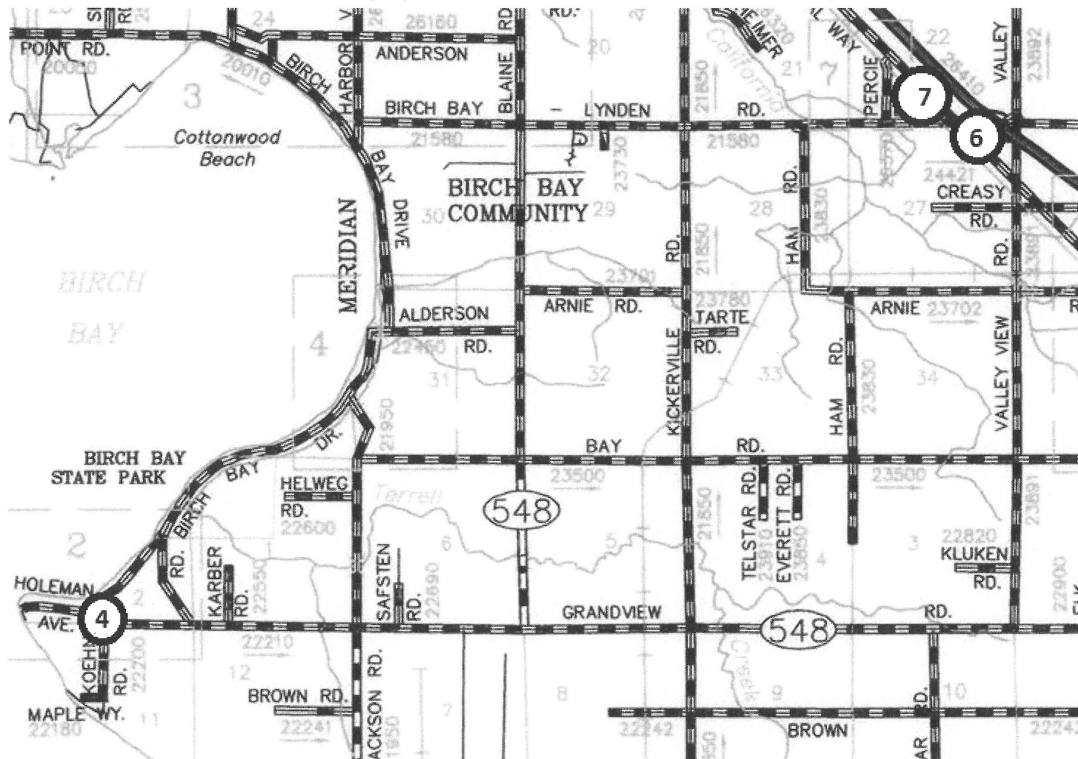
2 Country Ln eastbound at Curtis Rd



3 Jensen Rd westbound at Squalicum Lake Rd



- 4 Holeman Av eastbound at Birch Bay Dr
- 6 Birch Bay Lynden Rd eastbound from Portal Wy
- 7 Birch Bay Lynden Rd westbound from Portal Wy





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-648

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<b>File ID:</b>	AB2021-648	<b>Version:</b>	1	<b>Status:</b>	Discussed in Committee (public testimony already received)
<b>File Created:</b>	10/29/2021	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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Primary Contact Email: cstrong

### TITLE FOR AGENDA ITEM:

Ordinance adopting amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County and repealing Ordinance No. 2021-066

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County and repealing Ordinance No. 2021-066

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
11/09/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
11/23/2021	Council	HEARD PUBLIC TESTIMONY AND REFERRED TO COMMITTEE	Council Committee of the Whole
12/07/2021	Council Committee of the Whole	DISCUSSED	
01/11/2022	Council	REFERRED TO COMMITTEE	Council Planning and Development Committee

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01/25/2022 Council Planning and Development DISCUSSED  
Committee

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**Attachments:** Staff Memo, Proposed Ordinance, Exhibit A, Map of Facilities, Rosellison Comments to Council with PDS Responses.pdf, SB6505, SB6505 Final Bill Report, SB6505 Fiscal Note



# **Whatcom County Planning & Development Services Staff Report**

## **Proposed Amendments to WCC Title 20 (Zoning) Regulating the Production, Processing, and Retail Sales of Recreational Marijuana in Whatcom County and Repeal of Ordinance No. 2021-066 (Marijuana Moratorium)**

### **I. File Information**

**File #:** PLN2021-00009

**File Name:** Marijuana Regulations

**Project Summary:** Proposed amendments to WCC Title 20 (Zoning) regulating the production, processing, and retail sales of recreational marijuana in Whatcom County.

**Applicant:** Whatcom County Planning and Development Services (PDS)

**Location:** Countywide.

**Recommendations:**

- Planning Commission – Approve
- Planning and Development Services – Approve

**Attachments:**

- Draft Ordinance
- Exhibit A – Proposed Amendments

### **II. Background**

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 marijuana producers, processors, and retailers to become licensed by the Washington State Liquor Control Board (“WSLCB”).

On November 16, 2013, the WSLCB adopted final marijuana licensing rules as codified in Chapter 314-55 WAC. During the period between November 18, 2013 and December 20, 2013, the WSLCB accepted marijuana license applications for marijuana production, processing and retail facilities. Whatcom County began receiving notifications of proposed marijuana facilities from the WSLCB in mid-December, 2013, and the WSLCB anticipated issuing marijuana producer, processor, and retail licenses to qualified applicants starting in late February or March, 2014.

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 marijuana related businesses within their jurisdictions.

During the licensing application window between November 18, 2013, and December 20, 2013, the WSLCB accepted approximately 228 recreational marijuana producer, processor and/or retail license applications for unincorporated Whatcom County. Whatcom County soon after began receiving notifications from the WSLCB of those applicants and applied to locations. The Prosecuting Attorney and

PDS had at the time implemented a zoning interpretation policy, which stated that PDS would regulate marijuana proposed uses, as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County. However, it became evident that many of those proposed locations could conflict with other surrounding uses.

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 marijuana producers, processors, retailers and medical marijuana collective gardens.

On March 31, 2015, the Whatcom County Council adopted Ordinance 2015-006, which contains the current County zoning regulations for recreational marijuana type uses. The regulations allowed for the production (as a permitted use) and processing (as an administrative approval use) of marijuana in the Rural, Rural Forestry, Agriculture, Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts, subject to a proposed facility meeting several stated use standards. Such standards include odor controls (for indoor grows), lighting, traffic and parking control measures, as well as setbacks of 1,000 feet from community centers and 300 feet from residences not located on the same property.

When Whatcom County's regulations were first adopted, the County Council chose to treat marijuana production like any other agricultural endeavor, as most of the applicants were small businesses. However, as no new state licenses are being issued it seems that more recently larger operators (with more capital) are buying up the earlier licenses and expanding operations or changing locations.

Earlier this year both the Commission and the Council received numerous complaints from citizens neighboring certain of the marijuana production and processing facilities. Issues raised included odor, lighting, and excessive water usage. As of 4/27/2021, there were 2 licensed (only) producers, 4 licensed (only) processors, 29 licensed (combo) producers/processors, and 12 licensed retailers of marijuana in unincorporated Whatcom County (see attached map, which also indicates how many are in each zoning district). (For a comparison of the numbers of producers in other counties, see Figure 1, below.) It should be noted that the majority of complaints arise from only a couple of Whatcom County producers; the majority of the operations are complying with the regulations and not causing problems.

Based on those citizen complaints, the Planning Commission recommended, and the Council adopted, an interim 6-month moratorium on accepting applications for outdoor marijuana production and/or processing facilities (Ord. 2021-018, 4/6/21). On April 20th the Council expanded that moratorium to further clarify that "outdoors" for purposes of the moratorium includes production on open land; in non-rigid greenhouses (i.e., hoop houses); in greenhouses with rigid walls, a roof, and doors; and similar type greenhouse structures (Ord 2021-023). That moratorium would have expired on November 7, 2021. However, on October 26, 2021, the Council extended that moratorium for another six months.

The Council also placed on the County's annual docket PLN2021-00009, directing Planning and Development Services (PDS) to:

"Review and revised Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan."

Thus, the Planning Commission held two public workshops and with staff assistance developed the proposed amendments to the County's recreational marijuana land use regulations discussed below. On October 14<sup>th</sup> they held a public hearing and voted 5-2-0 to approve the amendments shown in Exhibit A.

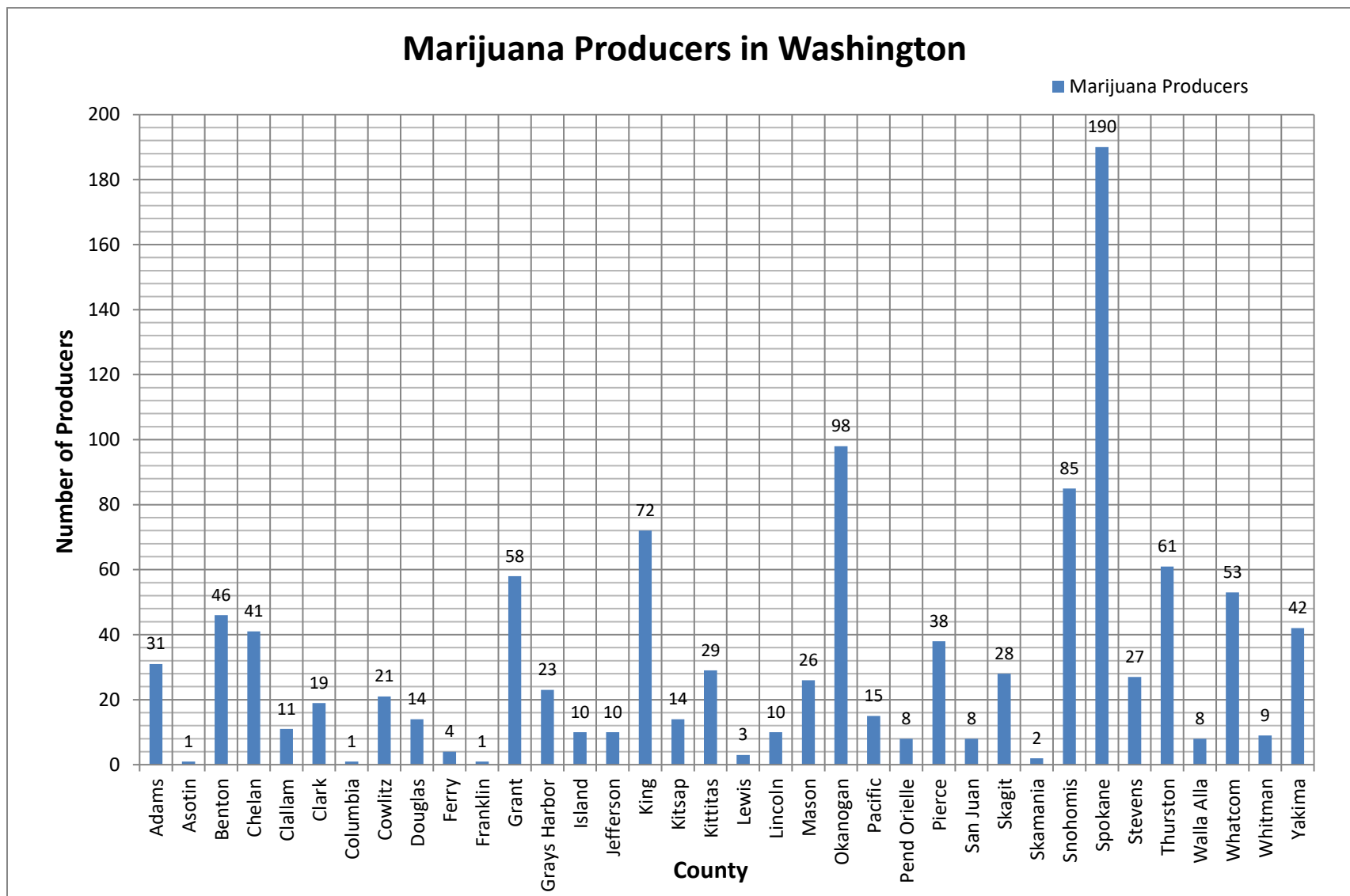


Figure 1. Number of marijuana producers in WA State counties (LCB data, Aug 2021).

### III. Proposed Amendments

The proposed amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein. Tables 1 and 2

**Table 1. Summary of Existing Marijuana Rules**

	Zone Requirements						Supplemental Requirements (Applies in all zones)											
Type	Zone	Permit Type	Distance req't	Lot Size	Accessory Use	Odor	Odor	Lighting	Traffic	Parking	Character	Max. Employees						
Production	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence	If land is < 4.5 ac then facility limited to 2,000 sf			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking	Must be compatible with area's character	N/A						
	RF	P																
	A	P																
	RIM	P			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors													
	LII	P																
	HII	P																
Processing	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence <sup>1</sup>	If land is < 4.5 ac then facility limited to 2,000 sf <sup>2</sup>	Must be accessory to production	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking		10						
	RF	P	Not w/in 300' of an offsite residence <sup>1</sup>									10						
	A	P	Not w/in 1,000' of a community center <sup>1</sup>									20						
	RIM	P										10						
	LII	P										10						
	HII	P										10						
	Retail	STC	P		Limited to 2,500 sf													
		NC	P															
RGC		P																
GC		P																

Table 2, below, also provide summaries of the existing and proposed regulations, respectively. Following, however, is a list of proposed policy changes.

### **“Marijuana Production Facilities” Definition (§20.97.227)**

The terms “outdoor” and “indoor” production facilities are being relabeled as Type 1 and Type 2 Marijuana Production Facilities. The reason is that the difference between outdoor and indoor in terms of structure type is confusing, given that greenhouses and other such structures are a little of both. What seems to really matter—in terms of how many grow cycles one can obtain, and thus how often flowering marijuana produces the objectionable odor—is whether artificial lighting is used to aid in the growth cycle, as that extends growing and flowering cycles to several. Testimony from producers indicated that without artificial lighting a producer can only obtain one growth cycle here in Whatcom County.

One proviso is that producers have commented that even if they are small scale and don’t use artificial lighting for most production they still need at least one small structure (a.k.a, “headhouse” or “mother room”) in which they can overwinter<sup>1</sup> the plants. So the proposed definition of a Type 1 facility allows one small structure with artificial lighting for overwintering plants.

### **Locations for Type 1 (“Outdoor”) vs. Type 2 (“Indoor”) Production**

The Planning Commission was averse to prohibiting outdoor production entirely, in particular because it uses less energy and is less costly for small start-ups. But they did want to limit the size of outdoor production in the zones that typically have more residential uses (i.e., Rural and Agriculture) as one way to reduce odor impacts (most odor complaints have arisen around the larger (Tier 3) hybrid<sup>2</sup> facilities in the Rural district).

Thus, the draft regulations propose to:

- a) Allow Type 1 facilities only in the Rural and Agricultural districts and limit the area of production facilities to a maximum of 1 and 2 acres, respectively, (§20.80.690(2)(a)); and
- b) Allow Type 2 facilities only in the Rural (with a facility size limit of 1 acre) and industrial (RIM, LII, & HII) districts (with no facility size limit).

(Note: Lot coverage standards for each district also place a limit on the total square footage of structures on a lot commensurate with the lot size.)

### **Use and Permit Requirements**

As a way to further reduce externalities the Commission wanted to require permits that have more public process. Thus, rather than being a Permitted use in most zones as they are currently, the following is proposed:

- In the Rural and Agriculture districts Type 1 production and processing should be an Administrative Approval Use (requiring public notice, written comments, and decision by staff);
- In the Rural district Type 2 production should be a Conditional Use (requiring public notice and a public hearing and decision by the Hearing Examiner).

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<sup>1</sup> According to one knowledgeable producer overwintering plants is part, but only part, of the purpose of the headhouse. Their primary purposes are 1) the preservation of genetics and 2) the propagation of new plants.

<sup>2</sup> Moving plants between and using both artificial and natural lighting (or indoor and outdoor) so as to achieve more growing cycles.

- In the Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts Type 1 production should not be allowed (as these zones are intended for industrial type development and higher wage job creation) but Type 2 production and processing should be allowed as a Permitted Use.
- Additionally, neither marijuana production nor processing should be allowed in the Rural Forestry district, as this zone is intended to protect such lands for forest production and forestry jobs. Currently there are no production or processing facilities located in this district.

## Lighting

One of the other externalities from outdoor grow operations people have complained about is the excessive lighting coming from grow lights in transparent and semi-transparent structures (i.e., green- and hoop-houses). Additionally, growing seasons can be extended to up to 3-4 cycles by using artificial lighting, extending the odiferous periods significantly.

For outdoor fixtures (security lights, etc.), lighting impacts can be mitigated by requiring the installation and use of down-shielding. For facilities using artificial lighting in their growth cycles, lighting impacts can be mitigated by requiring the installation and use of blackout shades. Such language has been included in the draft amendments (§20.80.690(3)(a)).

## Odor

Odor from Type 2 (“indoor”) production can be controlled through the installation and use of ventilation and odor control systems, and such language has been included in the draft amendments (§20.80.690(3)(g)(ii)). And though language has been included stating that odor from any production facility cannot be detectable at or beyond the property boundaries at a level that causes a public nuisance (§20.80.690(3)(g)(i)), odor from Type 1 facilities cannot be controlled the same as with Type 2 production facilities. However, it is understood that Type 1 production can generally only obtain one growth cycle, so the time and duration of odors from these facilities should be limited. Additionally, it can be significantly reduced in time and duration through the other regulations the Commission recommends, as discussed herein.

## Limit on Number of LCB Licenses per Lot

As a way of preventing multiple businesses from operating on the same lot or from one business buying additional LCB licenses and stacking multiple licenses to create larger scale, more intensive operations, the Commission proposes to limit operations to one production and/or processing license(s) per lot in the more residential districts. Thus, such language has been included in the draft regulations for the Rural and Agriculture districts. (§20.80.690(2)(d))

## Setbacks/Separation Requirements

Currently production in the Rural, Rural Forestry, and Agriculture districts requires a 1,000’ separation (measured from property lines) from community centers<sup>3</sup> and a 300’ setback (measured from

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<sup>3</sup> Defined in Title 20 as “land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational, religious, or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses, and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this title are not included.”

structures) from existing off-site residences<sup>4</sup>. For processing the same rule applies in the Rural district, but only the 300' setback from residences applies in the Rural Forestry district, and the 1,000' setback from community centers in the Agricultural district. The Commission expressed no interest in modifying the existing setback and separation requirements so the existing ones have been carried over into the proposed amendments. (§20.80.690(2)(b))

But additionally, based on public comments the Commission received, the draft amendments would require a 1,000 foot separation between production facilities so that one particular neighborhood doesn't all end up with several. (§20.80.690(2)(c))

### **Processing Facilities that Use Hazardous Materials**

The Commission agreed that processing facilities that use hazardous materials should only be allowed in the industrial districts. Such language has been included in the draft amendments (§20.80.690(2)(f)). Currently there are no such facilities in the rural districts, as adequate fire flow is necessary and can't be obtained without major investment. Thus, this change shouldn't affect any existing processors.

### **Nonconforming Rules**

The Commission agreed that production and processing facilities made nonconforming by revisions to the marijuana regulations should be able to continue (as are all nonconforming uses under the County code), but not be able to expand (by any significant amount) or change to another nonconforming use. Thus such language has been included (§20.80.690(1)(e)).

## **IV. Comprehensive Plan Evaluation**

The proposed amendments to WCC Title 20 (Zoning) have been developed using the guidance of the Comprehensive Plan so as to remain consistent. Though there are no policies regarding marijuana production or processing, the following support the proposed amendments:

Policy 2DD-2: Protect the character of the rural area through the County's development regulations.

(Supports limiting the size, location, and types of marijuana production facilities in the rural areas so as to reduce externalities)

Policy 2FF-2: Support resource-based industries that require only rural services, conserve the natural resource land base, and help maintain the rural character and lifestyle of the community.  
Assure adequate facilities, mitigation and buffers through development regulations.

(Supports eliminating marijuana production and processing facilities as an allowed use in the Rural Forestry district.)

## **V. Draft Findings of Fact and Reasons for Action**

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. The County Council placed on the County's annual docket PLN2021-00009, directing Planning and Development Services (PDS) to: "Review and revised Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing

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<sup>4</sup> This 300' setback was taken from our manure lagoon regulations (WCC 20.80.225(2)) as a way to reduce odor impacts.

facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan.”

2. Whatcom County Planning and Development Services (PDS) submitted an application (PLN2021-00009) to revise the County’s recreational marijuana production, processing, and retail sales zoning regulations.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on September 29, 2021.
4. Notice of the subject amendments was submitted to the Washington State Department of Commerce on September 13, 2021, for their 60-day review.
5. On October 14, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed draft amendments.
6. The County Council held a duly noticed public hearing on the proposed amendments on   X  , 2021.
7. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, Chapter 314-55 WAC, and other applicable requirements.
8. The proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare.
9. Once this ordinance is adopted and effective there is no longer a need for the interim moratorium imposed by Ordinance No. 2021-066.

## **VI. Proposed Conclusions**

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VII. Recommendation**

At their October 14, 2021, meeting the Planning Commission voted 5-2-0 to approve the draft findings of fact and the amendments shown in Exhibit A.

Planning and Development Services recommends that the County Council approve the draft ordinance with amendments to the Whatcom County Code as shown in Exhibit A.



**Table 1. Summary of Existing Marijuana Rules**

	Zone Requirements						Supplemental Requirements (Applies in all zones)											
Type	Zone	Permit Type	Distance req't	Lot Size	Accessory Use	Odor	Odor	Lighting	Traffic	Parking	Character	Max. Employees						
Production	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence <sup>5</sup>	If land is < 4.5 ac then facility limited to 2,000 sf <sup>6</sup>			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking	Must be compatible with area's character	N/A						
	RF	P																
	A	P																
	RIM	P			For indoor production only, must install ventilation, can't emit odors beyond walls, or bother neighbors													
	LII	P																
	HII	P																
Processing	R	ADM	Not w/in 1,000' of a community center or 300' of an offsite residence <sup>1</sup>	If land is < 4.5 ac then facility limited to 2,000 sf <sup>2</sup>	Must be accessory to production	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	For indoor processing only, must install ventilation, can't emit odors beyond walls, or bother neighbors	Must be controlled away from adjoining properties and roads	Can't be more than what's expected in the zone	Must provide off-street parking		10						
	RF	P	Not w/in 300' of an offsite residence <sup>1</sup>									10						
	A	P	Not w/in 1,000' of a community center <sup>1</sup>									20						
	RIM	P										10						
	LII	P										10						
	HII	P										10						
	Retail	STC	P		Limited to 2,500 sf													
		NC	P															
RGC		P																
GC		P																

<sup>5</sup> May be waived when all adjacent property owners agree.

<sup>6</sup> Note that a Tier 1 production license allows up to 10,000 sf of grow area, so this rule essentially prohibits production on smaller lots.

Table 2. Summary of Proposed Marijuana Rules

Type	Zone Requirements			Supplemental Requirements										
	Zone	Facility/Permit Type	Lot Coverage <sup>1</sup>	Facility Size Restrictions	Separation of Facilities	Accessory Use	Separation	# of Licenses	Hazardous Materials	Screening	Odor	Lighting	Noise	Other
Production	R	Type 1 – ADM	No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20%, whichever is greater, of the total lot area, not to exceed 25,000 square feet. (§20.36.450)	For parcels < 4.5 ac production or processing facilities limited to 2,000 sf	Not w/in 1,000' of another production facility		Not w/in 1,000' of a community center or 300' of an offsite residence <sup>2</sup>	1 production and/or 1 processing license per lot	N/A	Consistent with WCC 20.80.345 (Buffer Plantings).	Must install engineered odor control system; no VOCs shall be emitted that is detectable at or beyond the property boundaries	Light fixtures shall be designed and down-shielded away from adjoining properties, critical areas, shorelines, and public roads. Indoor lights must use blackout shades. All structures using artificial lighting for aiding in the growth cycle of plants shall install and employ mechanisms (e.g., blackout shades) that prevent light from escaping production structures	Shall comply with WCC 20.80.620 (Noise), and have a mechanical engineer design the noise control system	Must also comply with security, water, waste disposal, and parking standards
		Type 2 – CUP		For parcels ≥ 4.5 ac production facility limited to 1 ac										
	AG	Type 1 – ADM	No structure or combination of structures, including accessory buildings, shall occupy or cover more than 25% of the total area of the subject parcel... (§20.40.450)	For parcels < 4.5 ac production facility limited to 2,000 sf	For parcels ≥ 4.5 ac production facility limited to 2 ac		Also limited by lot coverage restrictions							
	RIM	Type 2 – P	In a rural community designation, combined floor area of all buildings shall not exceed that of a use of the same type that existed on a lot in that same rural community designation on July 1, 1990. (§20.69.451)	In a rural business designation, building or structural coverage of a lot shall not exceed 50% of the total area. (§20.69.452)										
	LII	Type 2 – P	The maximum building coverage shall not exceed 60% of the lot size. (§20.66.450)											
	HII (ADM)	Type 2 – P	The maximum building or structural coverage shall not exceed 60% of the lot size. (§20.68.450)											
Processing	R	ADM	Same as for production, above	For parcels < 4.5 ac processing & production area limited to 2,000 sf		Must be accessory to production	Not w/in 1,000' of a community center or 300' of an offsite residence <sup>2</sup>	1 production and/or 1 processing license per lot	Not allowed					
	AG	ADM							Allowed, but with standards					
	RIM	P												
	LII	P												
	HII	P												
Retail	STC	P		Limited to 2,500 sf										
	NC	P												
	RGC	P												
	GC	P												

<sup>1</sup> Though not a specific marijuana facility regulation, these rules apply to all hard surfaces, including structures and would limit the size of structures commensurate with the lot size.

ORDINANCE NO. \_\_\_\_\_

**ADOPTING AMENDMENTS TO WCC TITLE 20 (ZONING) REGULATING THE PRODUCTION, PROCESSING,  
AND RETAIL SALES OF RECREATIONAL MARIJUANA IN WHATCOM COUNTY AND REPEALING  
ORDINANCE NO. 2021-066**

**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 mid-December 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,

**WHEREAS**, Ordinance 2015-006 allows for the production and processing of cannabis in the Rural (administrative uses), Rural Forestry (permitted uses) and Agriculture zone districts (permitted uses), subject to a proposed facility meeting several stated use standards. Such standards include odor controls (for indoor grows only), lighting, traffic and parking control measures, as well as setbacks of 1,000 feet from community centers and 300 feet from residences not located on the same property. The ordinance also allowed for the production and processing of marijuana in the Rural Industrial and Manufacturing, Light Impact Industrial, and Heavy Impact Industrial districts as permitted uses, subject to odor control measures (for indoor grows); and,

**WHEREAS**, the WSLCB is no longer issuing new licenses, existing licenses throughout Washington State can be transferred and Whatcom County was notified by the WSLCB of approximately 30 recreational marijuana production and/or processing renewal licenses last year (2020) within unincorporated Whatcom County; and,

**WHEREAS**, while earlier licensees were small, local producers, their licenses now appear to be being transferred to larger operators with more capital who are buying up the earlier licenses and expanding and/or changing operations and/or locations; and,

**WHEREAS**, prior to adoption of the first moratorium on issuing new permits for certain marijuana production facilities, the Council, Executive, Planning Commission, and PDS received complaints from residents adjacent to existing and proposed cannabis facilities regarding excessive odor, lighting, and potential water usage, suggesting that the County's cannabis regulations may not be sufficient; and,

**WHEREAS**, on March 23, 2021, the County Council adopted the 2021 Docket, a component of the PDS work plan, including item PLN2021-00009, to "Review and revise Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan." However, due to the pandemic, the Planning Commission and County Council have backlogs of other issues to address, and PDS will need time to work with the community to properly develop and process any potential regulatory amendments; and,

**WHEREAS**, on April 20, 2021, the County Council adopted Ordinance No. 2021-023, imposing a six-month interim moratorium prohibiting the filing, acceptance, or processing of new applications for permits or authorizations for recreational marijuana production and/or processing facilities which are proposed to operate outdoors or in greenhouses; and,

**WHEREAS**, on October 26, 2021, through the adoption of Ordinance No. 2021-066, the Council extended that moratorium for an additional 6 months; and

**WHEREAS**, once this ordinance is adopted and effective there is no longer a need for the interim moratorium imposed by Ordinance No. 2021-066;

**WHEREAS**, pursuant to the Washington State Constitution, the general police powers granted to counties empower and authorize Whatcom County to adopt land use controls to provide for the regulation of land uses within the County and to provide that such uses shall be consistent with applicable law; and,

## **FINDINGS OF FACT**

1. The County Council placed on the County's annual docket PLN2021-00009, directing Planning and Development Services (PDS) to: "Review and revised Whatcom County Code relating to marijuana growing and processing in rural areas. Consider impacts of marijuana growing and processing facilities in rural areas, and evaluate growing and processing facilities as an agricultural or non-agricultural use. Consider compatibility with GMA and County Comprehensive Plan."
2. Whatcom County Planning and Development Services (PDS) submitted an application (PLN2021-00009) to revise the County's recreational marijuana production, processing, and retail sales zoning regulations.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on September 29, 2021.
4. Notice of the subject amendments was submitted to the Washington State Department of Commerce on September 13, 2021, for their 60-day review.
5. On October 14, 2021, the Planning Commission held a duly noticed public hearing to consider testimony on the proposed draft amendments.
6. The County Council held a duly noticed public hearing on the proposed amendments on November 23, 2021.
7. The amendments are consistent with the Growth Management Act, Whatcom County Comprehensive Plan, Chapter 314-55 WAC, and other applicable requirements.
8. 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 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. Ordinance No. 2021-066 is hereby repealed in its entirety upon the effective date of this ordinance.

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

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

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

\_\_\_\_\_  
Barry Buchannan, Council Chair

APPROVED as to form:

( ) Approved      ( ) Denied

*/s/ Royce Buckingham (approved via e-mail) / JL*

\_\_\_\_\_  
Civil Deputy Prosecutor

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

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

# Exhibit A – Proposed Marijuana Code Amendments

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## WCC Title 20 Zoning

### Chapter 20.36 RURAL (R) DISTRICT

#### 20.36.130 Administrative approval uses.

The following uses are permitted subject to administrative approval pursuant to WCC 22.05.028.

...

**.137** Type 1 Marijuana Production Facilities, subject to WCC 20.80.690y; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

- (1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/ business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility.
- (3) On parcels smaller than four and one half acres the facility shall not exceed a total of 2,000 square feet, except where the facility is contained within a building that existed on the effective date of the ordinance codified in this section.

**.138** Marijuana Processing Facilities, subject to WCC 20.80.690.y; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694 and WCC 22.05.028:

- (1) The facility is accessory to the on-site production of marijuana.
- (2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility.
- (3) On parcels smaller than four and one half acres the total area used for marijuana processing and production shall not exceed 2,000 square feet, except where the facility is contained within a building that existed on the effective date of the ordinance codified in this section.

**20.36.150 Conditional uses.**

...

.160 Type 2 Marijuana Production Facilities, subject to WCC 20.80.690.

...

**Chapter 20.40 AGRICULTURE (AG) DISTRICT****20.40.050 Permitted uses.**

Unless otherwise provided herein, permitted, accessory, and conditional uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), Chapter 16.08 (the Whatcom County SEPA) Ordinance, Title 21 (Land Division Regulations), the Whatcom County Subdivision Ordinance and Title 23 the Whatcom County (Shoreline Management Program). The following are permitted uses:

...

~~.059~~ Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:

- ~~(1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility and the waiver is approved through an administrative approval process per WCC 22.05.028.~~
- ~~(2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.~~

...

**20.40.100 Accessory uses.**

...

~~.115~~ Marijuana Processing Facility, WCC 20.80.690 through 20.80.694:

- ~~(1) The facility is accessory to the on-site production of marijuana.~~
- ~~(2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.~~



**20.40.130 Administrative approval uses.**

...

.140 Type 1 Marijuana Production Facilities, subject to WCC 20.80.690..141 Marijuana Processing Facilities, subject to WCC 20.80.690.

...

**Chapter 20.42 RURAL FORESTRY (RF) DISTRICT****20.42.050 Permitted uses.**

Unless otherwise provided herein, permitted, accessory, and conditional uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 WCC (Supplementary Requirements), and Chapter 22.05 WCC (Project Permit Procedures), the Whatcom County Chapter 16.08 (SEPA) Ordinance, Title 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance, and Title 23 the Whatcom County (Shoreline Management Program).

...

~~.070 Marijuana production facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:~~

- ~~(1) The facility shall not be located within 1,000 feet of a community center. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the community center. The zoning administrator may waive this spacing requirement from community centers if the authorized representatives of all existing community centers within 1,000 feet provide a notarized written agreement as provided by the department consenting to the facility and the waiver is approved through an administrative approval process per WCC 22.05.028.~~
- ~~(2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the production of marijuana. The zoning administrator may waive this spacing requirement from residential units if the owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.~~

...

**20.42.100 Accessory uses.**

...

~~.106 Marijuana processing facility; provided, that in addition to the criteria found in WCC 20.80.690 through 20.80.694:~~

- ~~(1) The facility is accessory to the on-site production of marijuana.~~
- ~~(2) The facility shall not be located within 300 feet of any existing residential unit not located on the same parcel as the facility. The distance shall be measured as the shortest straight line distance from the closest point of a single family dwelling (structure) to any structure or fence used for the processing of marijuana. The zoning administrator may waive this spacing requirement if the~~

~~owners of all existing residential units within 300 feet provide a notarized written agreement as provided by the department consenting to the facility, and the waiver is approved through an administrative approval process per WCC 22.05.028.~~

...

## Chapter 20.69 RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

### 20.69.050 Permitted uses.

The following permitted uses shall be allowed subject to an evaluation by the Director zoning administrator pursuant to the provisions of this chapter and WCC Chapter 20.80 (Supplementary Requirements) ~~WCC~~. In a rural community designation, nonresidential uses listed below are permitted if a use of the same type existed in that same rural community designation on July 1, 1990, per WCC 20.80.100(1). In a rural business designation all uses listed below are permitted.

#### .051 Manufacturing/fabrication type uses.

...

(17) Type 2 M marijuana production facilities, subject to WCC 20.80.690.

(18) Marijuana processing facilities, subject to WCC 20.80.690.

...

### 20.69.700 Performance standards.

#### 20.69.704 Odor, dust, dirt, and smoke.

(1) Except as specified in subsection (2), ~~No~~ odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

(2) For marijuana production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

#### ~~20.69.708 Marijuana odor.~~

~~For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.~~

Comment [CES1]: Now covered by 20.80.690(3)(g).

## Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LI) DISTRICT

### 20.66.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80 ~~WCC~~ (Supplementary Requirements), Chapter 22.05 ~~WCC~~ (Project Permit Procedures), Chapter 16.08 ~~(the Whatcom County SEPA) Ordinance~~, Title 21 (Land

Division Regulations), the Whatcom County Subdivision Ordinance and Title 23 the Whatcom County (Shoreline Management Program).

...

.087 Type 2 Marijuana Production or Processing Facilities, subject to WCC 20.80.690.

.088 Marijuana Processing Facilities, subject to WCC 20.80.690.

...

#### **20.66.700 Performance standards.**

...

#### **20.66.704 Odors.**

(1) Except as specified in subsection (2), No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

(2) For marijuana production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

#### **20.66.709 Marijuana odor.**

~~For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.~~

**Comment [CES2]:** Now covered by 20.80.690(3)(g).

### **Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT**

#### **20.68.050 Permitted uses.**

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of WCC Chapter 20.80-WCC, (Supplementary Requirements), and Chapter 22.05 WCC, (Project Permit Procedures), Chapter 16.08 (the Whatcom County SEPA) Ordinance, Title 21 (Land Division Regulations), the Whatcom County Subdivision Ordinance and Title 23 the Whatcom County (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

...

.066 Type 2 Marijuana Production or Processing Facilities, subject to WCC 20.80.690.

.067 Marijuana processing facilities, subject to WCC 20.80.690.

...

**20.68.700 Performance standards.**

...

- (1) Except as specified in subsection (2), ~~no~~ odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.
- (2) For marijuana production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

...

**~~20.68.709 Marijuana odor.~~**

~~For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.~~

**Comment [CES3]:** Now covered by 20.80.690(3)(g).

**20.80 SUPPLEMENTARY REQUIREMENTS****~~20.80.690 Marijuana production and processing.~~****~~20.80.691 Marijuana state license required.~~**

~~Prior to commencing operations, a marijuana producer, processor, or retailer shall obtain approval as a state-licensed marijuana producer, processor, or retailer under Chapter 69.50 RCW, as amended, and Chapter 314-55 WAC, as amended.~~

**Comment [CES4]:** Now covered by 20.80.690(1)(a).

**~~20.80.692 Application for county development permits—Timing.~~**

~~Applicants for marijuana production, processing, or retailing may apply for county development permits at any time. Applicants who wish to apply for county permits, or commence construction of facilities for producing, processing, or retailing of marijuana under Chapter 69.50 RCW, prior to obtaining approval as a state-licensed marijuana producer, processor or retailer do so at their own risk. Final occupancy of the building will not be granted until a state Liquor and Cannabis Board license has been approved.~~

**Comment [CES5]:** Now covered by 20.80.690(1)(a).

**~~20.80.693 Production.~~**

- (1) ~~For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.~~
- (2) ~~Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining property and the public road.~~

**Comment [CES6]:** Now covered by 20.80.690(3)(g).

**Comment [CES7]:** Now covered by 20.80.690(3)(a).

- (3) No traffic shall be generated by such a facility in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.
- (4) Any need for parking generated by the conduct of such a facility shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.
- (5) The proposed use shall be compatible with the general appearance and character of the surrounding area. The zoning administrator at his or her discretion may require landscape screening pursuant to the requirements of WCC 20.80.345.

#### **20.80.694 Processing.**

- (1) The facility employs no more than 10 permanent employees, except that in the Agriculture and Rural Forestry Zones the facility may employ no more than 20 employees.
- (2) For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or surrounding area. The system must be designed by a licensed Washington State professional engineer.
- (3) Any lights used to illuminate the facility shall be so arranged as to direct the light away from the adjoining property and the public road.
- (4) No traffic shall be generated by such a facility in greater volume than would normally be expected in the applicable zoning district and appropriate for the road classification which serves the property.
- (5) Any need for parking generated by the conduct of such a facility shall meet the off-street parking requirements as specified in this title. At least one additional space shall be provided for each nonresident on-site employee.

#### **20.80.690 Marijuana – Production and Processing Facilities.**

- (1) **General.** Marijuana production or processing facilities shall comply with RCW Title 69, Chapter 314-55 WAC, and the following general standards:
- The WSLCB must approve a marijuana license for the subject property prior to issuance of the County's certificate of occupancy for buildings proposed for marijuana production or processing. Any permitting or construction work done prior to receiving said license is done so at the applicant's own risk.
  - Consistent with WAC 314-55-015, marijuana production and processing shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited.
  - Marijuana production and processing are not allowed as home occupations or cottage industries.
  - Marijuana production and processing operations may not be located in critical areas or their buffers (WCC Chapter 16.16, Critical Areas) or in the shoreline jurisdiction (WCC Title 23).
  - Nonconforming Uses.** This section applies to those marijuana facilities legally existing as of INSERT DATE OF ADOPTION OF THESE RULES that, due to noncompliance with these standards,

**Comment [CES8]:** Staff believes we don't need this. Firstly, there's no way to judge what "greater volume than would normally be expected." Secondly, no production facility, with normally only a few employees and no customers coming to the site, would create an inordinate amount of traffic.

**Comment [CES9]:** Now covered by 20.80.690(3)(d).

**Comment [CES10]:** Now covered by 20.80.690(3)(b).

**Comment [CES11]:** Not needed. Was originally included when we were treating marijuana as an agricultural product, and this mimics the language for ag processing

**Comment [CES12]:** Now covered by 20.80.690(3)(g).

**Comment [CES13]:** Now covered by 20.80.690(3)(a).

**Comment [CES14]:** Staff believes we don't need this. Firstly, there's no way to judge what "greater volume than would normally be expected." Secondly, no production facility, with normally only a few employees and no customers coming to the site, would create an inordinate amount of traffic.

**Comment [CES15]:** Now covered by 20.80.690(3)(h).

**Comment [CES16]:** Note to Cliff: Fill in upon adoption

become nonconforming. Legally existing facilities that meet these standards are not considered nonconforming and may continue the use or they may expand with the proper permits.

(i) Continuation of Nonconforming Uses. Any legally existing marijuana production or processing facility that becomes nonconforming may continue operations as a nonconforming use within the terms of their permit(s) even when those facilities do not meet the standards of this section, pursuant to WCC 20.83.010.

(ii) Expansion of Nonconforming Uses. Similarly, expansion may be allowed pursuant to WCC 20.83.020, EXCEPT that:

A. Expansion of nonconforming Type 2 marijuana production facilities is prohibited; and,

B. Any other expansion shall be limited to 10% (in area) unless the standards of this section are met.

(iii) Change to Another Nonconforming Use. WCC 20.83.040 shall not apply: Nonconforming marijuana production or processing facilities shall not be able to change to another nonconforming use.

## **(2) District Specific Standards.**

### **a. Facility Size –**

(i) In the Rural district, production or processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater production and processing facilities shall not exceed 1 acre.

(ii) In the Agriculture district, production and processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater processing and production facilities shall not exceed 2 acres.

**b. Separation of Uses –** In the Rural and Agriculture districts, no facility shall be located within 1,000 feet of a **community center** or within 300 feet of any residential dwelling unit not located on the same parcel as the facility and existing at the time of application. Said distance shall be measured as the shortest straight line distance from property lines (for community centers) or structures (for residences).

**c. Separation of Facilities –** In the Rural and Agriculture districts, no marijuana production facilities shall be located within 1,000 feet of each other. Said distance shall be measured as the shortest straight line distance from such facilities.

**d. Limit on Number of Licenses per Lot.** In the Rural and Agriculture districts, only one Washington State Liquor and Cannabis Board (WSLCB) marijuana production license may be used per legal lot (though may be combined with one processing license).

**e. Accessory Use Only.** In the Rural and Agriculture districts, processing facilities are only allowed as an accessory use to a production facility.

**f. Hazardous Materials –** Marijuana processing using hazardous or flammable solvents or gases is allowed only in the LII, HII, or RIM districts. Producers and processors that will use chemicals, industrial solvents, or other noxious or hazardous substances shall comply with all federal, state, and County safety, fire, structural, storage, and disposal standards. They shall describe the proposed use of hazardous substances, methods, equipment, solvents, gases, and mediums identified in WAC 314-55-104 on permit applications and site plans.

**Comment [CES17]:** Defined in T-20 as, "Community center" means land and/or building(s) owned by a public agency or private nonprofit entity used for social, civic, educational, religious, or recreational purposes, which serves mainly the community where located; including but not limited to community halls and centers, grange halls, senior citizen centers, teen centers, youth clubs, field houses, and churches. The facilities are available for occasional public meetings. They may also have the minimal kitchen facilities required for occasional banquets. Private clubs as defined in this title are not included."

**(3) Facility Design Standards.**

- a. Lighting – For both Type 1 and 2 production facilities:
  - (i) Outdoor fixtures illuminating production or processing operations shall be designed and down-shielded to direct light away from adjoining properties, critical areas, shorelines, and public roads.
  - (ii) All structures using artificial lighting for aiding in the growth cycle of plants shall install and employ mechanisms (e.g., blackout shades) that prevent light from escaping production structures.
- b. Screening – Marijuana production and processing facilities shall be landscaped and screened consistent with WCC 20.80.300, et seq. (Landscaping). Screening shall be located outside of the state's required security fence to provide a visual barrier.
- c. Security – Producers and processors shall install the security requirements of WAC 314-55-083 prior to issuance of the County's certificate of occupancy for a marijuana operation.
- d. Parking – Such facilities shall meet the off-street parking requirements of WCC 20.80.500, et seq. (Off-street Parking and Loading Requirements).
- e. Water and Waste Disposal – Permit applications shall include documentation of compliance with the water system requirements and waste disposal regulations of WCC Title 24 (Health Code) and WAC 314-55-097.
- f. Noise – Producers and processors required to install odor control system per subsection (g) shall comply with WCC 20.80.620 (Noise). Fan noise from operations shall be minimized. A mechanical engineer licensed in the state of Washington shall design the noise control system, to be approved by the Building Official, using standard industry practices such as installing fans with components listed by Underwriters Laboratories (UL) and a combination of the following techniques and components:
  - (i) Short and straight line vent runs;
  - (ii) Silencers and insulated vents, vent sleeves and mufflers;
  - (iii) Acoustic ducting;
  - (iv) Fan speed controllers;
  - (v) Soundproofing boxes;
  - (vi) Sound-muffling casing;
  - (vii) Padded foam cushions under the fans;
  - (viii) Intelligent programming motors and controllers; and
  - (ix) Hanging fans hung from bungee cords from hooks in ceiling.
- g. Odor –
  - (i) All Production and Processing – No odor, terpenes, or other similar volatile organic compounds (VOCs) shall be emitted that is detectable at or beyond the property boundaries of the facility in such a concentration or of such duration as to cause a public nuisance or threaten health or safety.
  - (ii) Type 2 Production – Type 2 producers shall minimize odors emitted by using best management practices and technology, and all air must go through an odor control system before being vented outdoors. A mechanical engineer licensed in the state of Washington shall design the odor control system using guidance from the National Air

Filtration Association and approved by the Building Official. The odor control plan must incorporate a combination of the following site design practices, tools, or other newly improved technologies to mitigate odors:

- A. Use of filters on exhaust air prior to dispersal;
- B. Placement of operations after consideration of predominant wind directions;
- C. Installation of additional vegetative buffers around grow areas;
- D. Reduction of passive odor escapes by tightening and sealing structures;
- E. Use of negative pressure techniques and air locks to reduce odors from escaping when doors open;
- F. Use of chillers that move water around the structure and leave air in place instead of air conditioning;
- G. Installation of carbon filter scrubbers to heating, ventilation, and air conditioning systems;
- H. Installation of dry vapor systems;
- I. Installation of ionizers;
- J. Use of mini-vapor screens on the interior, and Vapomatic and vapor screens on the exterior of structures;
- K. Installation of a piping system on perimeter fencing that neutralizes malodorous molecules;
- L. Installation of a gas phase filtration system; and/or,
- M. Installation of a fog system to disperse mixed water- and odor-neutralizing chemicals.

h. *Building Permits Required* – Building permits shall be required for any structures used in Marijuana Production Facilities.

#### **20.80.691 Marijuana – Retail Sales Facilities.**

Marijuana retail sales facilities shall comply with RCW Title 69, WAC Chapter 314-55, and the following.

1. The WSLCB must approve a marijuana retail sales license for the subject property prior to issuance of the County's certificate of occupancy for buildings proposed for marijuana retail sales. Any permitting or construction work done prior to receiving said license is done so at the applicant's own risk.
2. Consistent with WAC 314-55-015, marijuana retail sales shall not take place in a residence or other location where law enforcement access, without notice or cause, is limited. Marijuana retail sales are not allowed as home occupations or cottage industries.
3. Retail sales facilities shall install the security requirements of WAC 314-55-083 prior to issuance of the County's certificate of occupancy for a marijuana operation.
4. Such facilities shall meet the off-street parking requirements of WCC 20.80.500, et seq. (Off-street Parking and Loading Requirements).



## Chapter 20.97 DEFINITIONS

### 20.97.010 Agriculture.

“Agriculture” means the use of land for farming, horticulture, floriculture, viticulture, and the necessary accessory uses for packing, treating or storing the produce; ~~provided, however, that, though~~ the operation of any such accessory uses shall be secondary to that of normal agricultural activities. However, the production of marijuana is not considered agriculture.

### 20.97.010.1 Agricultural Processing.

“Agricultural processing” means the transformation, either chemically or physically, of raw agricultural goods including but not limited to washing, grading, sizing, drying, extracting, icing, producing ornamental agricultural products, sorting, cutting, pressing, bagging, freezing, canning, packaging, milling, crushing, fermenting, aging, pasteurizing, preserving, storage, bottling, but excluding slaughtering of livestock. Agricultural processing includes those process steps associated with product preparation and processing. Storage, warehousing, and distributing products in conjunction with the agricultural processing activity occurring on that site shall be allowed. However, the processing of marijuana is not considered agricultural processing.

### 20.97.225 Marijuana, ~~marihuana or cannabis.~~

“Marijuana,” (a.k.a., “marihuana” or “cannabis”) means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

### 20.97.226 Marijuana processing facility.

“Marijuana processing facility” means a facility licensed by the state Liquor and Cannabis Board to process marijuana into useable marijuana, marijuana concentrates, and marijuana-infused products; ~~and~~ package and label useable marijuana and marijuana-infused products for sale in retail outlets; ~~and~~ sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers. A marijuana processing facility shall include any structure that is associated with the processing of marijuana.

### 20.97.227 Marijuana production facility.

“Marijuana production facility” means 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. A marijuana producer may also produce and sell marijuana plants, seed, and plant tissue culture to other state-licensed marijuana producers. The area of a marijuana production facility includes all the area enclosed within a structure or fence that is required by the state Liquor and Cannabis Board for the production of marijuana. Where limitations on size are imposed pursuant to §20.80.690, the “facility” shall include all structures related

to the production or processing of marijuana and any ground in which marijuana is grown. For the purposes of this code, Whatcom

- A. “Type 1 Marijuana ~~Outdoor~~ Production Facilities” shall mean production ~~may~~ takes place outdoors, including in an expanse of open or cleared ground, or in ~~nonrigid greenhouses, other structures that have no artificial lighting for aiding in the growth cycle, or an expanse of open or cleared ground fully enclosed by a physical barrier.~~ except that Type 1 facilities may allocate up to 10% of the total square footage of their allowed facility area to genetic preservation and plant propagation in a designated indoor area with artificial lighting. This area must be clearly identified and described in the permit the application, and is subject to all the supplemental requirements of a Type II Facility; however, no flowering plants are permitted in this area at any time.
- B. “~~Indoor~~ Type 2 Marijuana ~~Production~~ Facilities” shall mean production facilities that use artificial lighting for aiding in the growth cycle ~~within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.~~

**20.97.228 Marijuana retail facility.**

“Marijuana retail facility” means a facility licensed by the state Liquor and Cannabis Board to sell useable marijuana and marijuana-infused products in a retail outlet. A marijuana retail facility shall include any building or portion thereof that is associated with the sale of marijuana.







# Danielle Rosellison's Comments on the Proposed Marijuana Regulations, with PDS Responses

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SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Staff Report II. Background. Paragraph 4.	The Prosecuting Attorney and PDS had at the time implemented a zoning interpretation policy, which stated that PDS would regulate marijuana proposed uses, as allowed by Initiative 502 in the same way as any other commodity that is grown, processed, or sold in Whatcom County.	Cannabis is a plant. Period. And thus should be treated as any other commodity grown, processed or sold in Whatcom County. This is an excellent interpretation of I-502 and I fully support this. We cannot lose sight of this!	Continue to treat the cannabis plant, all cannabis plants, like any other commodity that is grown, processed and sold in Whatcom County.	N/A, as the staff report is just background information.
Staff Report II. Background. Paragraph 7.	When Whatcom County's regulations were first adopted, the County Council chose to treat marijuana production like any other agricultural endeavor, as most of the applicants were small businesses.	The Council was wise to treat cannabis like any other agricultural endeavor. I would like to know what data was used to make the assumption that "more recently larger operators (with more capital) are buying up the earlier licenses and expanding operations or changing locations."	Please obtain the data from the WSLCB regarding the owners of 502 companies in Whatcom County. How many have changed ownership since license approval? How many are Whatcom County locals? How long have they lived	N/A, as the staff report is just background information.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	However, as no new state licenses are being issued it seems that more recently larger operators (with more capital) are buying up the earlier licenses and expanding operations or changing locations.	While I definitely agree that there is without a doubt at least one example of this, which is the main reason for complaints and the moratorium, but what does the actual data say? How many operations in Whatcom County are owned by Whatcom County residents? How many are "transplants" (for lack of a better term)? How many are originally Whatcom County locals but have expanded due to successful business plans? Don't we want to support those people? We don't want to punish all Whatcom County cannabis companies for the actions of a few bad actors.	in Whatcom County? How many moved to Whatcom County from other WA counties? All of this information is available with a public records request.	
Staff Report II. Background. Paragraph 8.	It should be noted that the majority of complaints arise from only a couple of Whatcom County producers; the majority of the operations are complying with the regulations and not causing problems.	With all due respect, it is not good policy to conservatively change the rules for everyone due to a few bad actors.	Find ways to address the bad actors without making the entire industry suffer.	N/A, as the staff report is just background information.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Exhibit A – 20.69.704; 20.66.704; 20.68.700 Odor, dust, dirt, and smoke	(1) Except as specified in subsection (2), No odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.	There are a few concerns here: 1) "or smoke". Consuming cannabis on licensed premises is not allowed per WAC 314-55-015(12): Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on or within the licensed premises. Thus, by WCC Ordinance adding the word "smoke" what we are actually prohibiting is the burning of perishable waste. Is that really what we want? To not allow cannabis farmers to burn legally burnable material? 2) So much of this section is dependent on the neighbors, and basically whether they like or dislike cannabis. Is this normal nomenclature for all agriculture in Whatcom County? If not, why are we singling out cannabis? Do we have the same restrictions for hemp? Hemp is the same plant as marijuana; they smell EXACTLY the same. Cannabis is legal in WA	My suggestion is that you look at current hemp regulations and mimic them. I did a quick google search and couldn't find anything specific to hemp in Whatcom County.	The proposed language mimics other sections of code that limits public nuisances: No one should be able to cause a public nuisance. Furthermore, Whatcom County doesn't have hemp regulations.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
		State, as voted on by The People, and national legalization is around the corner. It is imperative that we make rules that treat cannabis like the agricultural commodity that it is, and not tie regulations to subjective opinions of the plant.		
Exhibit A – 20.80.690(1)(c)	Marijuana production and processing are not allowed as home occupations or cottage industries	Cannabis farmers are working diligently with the State Legislature to get the same rights as wine, beer and spirits. Is Whatcom County hurting themselves by prohibiting cannabis as a "cottage industry"?	Marijuana production and processing are not allowed as home occupations <del>or cottage industries</del>	Cottage industries are allowed in homes. Neighbors shouldn't have to worry that marijuana processing is going to be allowed in their neighbor's house. Marijuana specific regulations in this case supercede home occupation and cottage industry codes anyway so its not really a permitting option and the language is just trying to make that clear to the public.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Exhibit A – 20.80.690(2)(a)(i) & (ii)	<p>In the Rural district, production or processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater production and processing facilities shall not exceed 1 acre.</p> <p>(ii) In the Agriculture district, production and processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet. On lots of 4.5 acres or greater processing and production facilities shall not exceed 2 acres.</p>	<p>When I read this (and 20.97.227) I understand it to mean, that if you parcel is less than 4.5 acres, you cannot have a structure larger than 2000 square feet nor can you grow more than 2000 square feet and if your parcel is 4.5 acres or larger, your facility can be 1-2 acres. Is that accurate? If so, that means if you have at least 4.5 acres, you can dedicate 43560 square feet to a building (or 22% of your property) while if you have 4.4 acres, you can only dedicate 2000 square feet to a building or grow (or 1%). That's a REALLY BIG DIFFERENCE. This will basically eradicate all grows, no matter the size from parcels that are less than 4.5 acres. Where did the idea that facilities can't be larger than 2000 square feet come from? The smallest cannabis license is a Tier 1, which is allowed to grow up to 4000 square feet of canopy. The largest license, a Tier 3, is</p>	<p>In the Rural district, production or processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet <u>of licensed canopy</u>.  <del>On lots of 4.5 acres or greater production and processing facilities shall not exceed 1 acre.</del></p> <p>(ii) In the Agriculture district, production and processing facilities on parcels smaller than 4.5 acres shall not exceed a total of 2,000 square feet <u>of licensed canopy</u>.  <del>On lots of 4.5 acres or greater processing and production facilities shall not exceed 2 acres.</del></p>	<p>This is the current rule. Furthermore, we can't regulate canopy. LCB regulates canopy but has struggled with varying interpretations. We regulate facility sizes for other types of uses, and this is in keeping with facility sizes for cottage industries.</p>



SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
		<p>allowed 30,000 square feet which is less than 1/4 of an acre. As mentioned in the "Whatcom County Planning &amp; Development Services Staff Report", all cannabis farms, regardless if they are growing indoor, outdoor, hoop houses or greenhouses, need an indoor area to keep their moms alive for cloning. Where did this 2000 square foot facility come from? It feels arbitrary and capricious. Furthermore, production facilities need room for hallways, trimming, social distancing (due to COVID), and storage, to name a few. Cannabis farms need an area that is dry with good air flow to cure their product, which is normally done indoors. The definition of a production facility (20.97.227) acknowledges this additional processes needed indoors. If licenses are only allowed a 2000 square foot structure, where will the curing and other</p>		

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
		production tasks take place? I do not think 2000 square feet is enough space. Since I believe the intent for the 2000 square feet is for growing, I would suggest adding the words "of canopy" which is explained by the LCB in WAC 314-55-075(6) as "The maximum amount of space for marijuana production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy."		
Exhibit A – 20.80.690(2)(d)	Limit on Number of Licenses per Lot. In the Rural and Agriculture districts, only one Washington State Liquor and Cannabis Board	While I don't particularly like this section, if the goal is to keep big players away, this will likely do that. Since canopy is limited, and producer/processors can't own more than 3	no comment	

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	(WSLCB) marijuana production license may be used per legal lot (though may be combined with one processing license).	licenses, it is not economically viable as a business to not put all your licenses in one location.		
Exhibit A – 20.80.690(3)(a)(i) & (ii)	Lighting – For both Type 1 and 2 production facilities: (i) Outdoor fixtures illuminating production or processing operations shall be designed and down-shielded to direct light away from adjoining properties, critical areas, shorelines, and public roads. (ii) All structures using artificial lighting for aiding in the growth cycle of plants shall install and employ mechanisms (e.g., blackout shades) that prevent light from escaping production structures	I love this. Light pollution is real.	No change.	

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Exhibit A – 20.80.690(3)(f)	Noise – Producers and processors required to install odor control system per subsection (g) shall comply with WCC 20.80.620 (Noise). Fan noise from operations shall be minimized. A mechanical engineer licensed in the state of Washington shall design the noise control system, to be approved by the Building Official, using standard industry practices such as installing fans with components listed by Underwriters Laboratories (UL) and a combination of the following techniques and components: (i) Short and straight line vent runs; (ii) Silencers and insulated vents, vent sleeves and mufflers; (iii) Acoustic	This seems like a serious overkill to me. At Trail Blazin, you can't hear anything from outside the facility and the only thing we implemented of i-ix was iv, fan speed controllers since most fans come with different settings.	Noise – Producers and processors required to install odor control system per subsection (g) shall comply with WCC 20.80.620 (Noise). Fan noise from operations shall be minimized <del>and</del> <del>A mechanical engineer licensed in the state of Washington shall design the noise control system, to be approved by the Building Official, using standard industry practices such as installing fans with components listed by Underwriters Laboratories (UL) and a combination of the following techniques and components:</del> (i) Short and straight line vent runs; (ii) Silencers and insulated vents, vent sleeves and mufflers; (iii) Acoustic	Again, this is nuisance reduction, taken from San Juan County's code, which the P/C recommended we incorporate, as no one wants fan noise 24/7 from adjacent producers/ processors. We're glad that Trail Blazin' meets the requirement.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	ducting; (iv) Fan speed controllers; (v) Soundproofing boxes; (vi) Sound-muffling casing; (vii) Padded foam cushions under the fans; (viii) Intelligent programming motors and controllers; and (ix) Hanging fans hung from bungee cords from hooks in ceiling.		ducting; (iv) Fan speed controllers; (v) Soundproofing boxes; (vi) Sound-muffling casing; (vii) Padded foam cushions under the fans; (viii) Intelligent programming motors and controllers; and (ix) Hanging fans hung from bungee cords from hooks in ceiling.	
Exhibit A – 20.80.690(3)(g)(i)	Odor – (i) All Production and Processing – No odor, terpenes, or other similar volatile organic compounds (VOCs) shall be emitted that is detectable at or beyond the property boundaries of the	Cannabis is a plant. Cannabis is agriculture. Agriculture smells. Period. To make rules stating that plants aren't allowed to smell is questionable. Who determines if it smells? How can the determiner tell if the terpene a-pinene that they smell is from the cannabis plant or the pine trees? How	Odor – (i) All Production and Processing – No odor, terpenes, or other similar volatile organic compounds (VOCs) shall be emitted that is detectable at or beyond the property boundaries of the facility in such a concentration or of	Again, this is nuisance reduction. Odor was one of the main issues raised by the citizenry who complained to Council, which led to them placing this rewrite of the marijuana regulations on our work program. Furthermore, while the legalization of marijuana was voted on, the measure did not say that it would be treated as an agricultural product.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	facility in such a concentration or of such duration as to cause a public nuisance or threaten health or safety	can the determiner tell if the linalool is from lavender or cannabis? This seems REALLY subjective, and rides on the balance of whether your neighbors like or dislike the plant. The People of Washington voted to legalize (and that was deemed an essential business in WA during COVID). Furthermore, what are the rules for hemp? Hemp and cannabis are the same plant. They smell exactly the same. Does hemp have the same odor restrictions? Why or why not? These are important questions to ask before implementing these rules.	<del>such duration as to cause a public nuisance or threaten health or safety.</del>	
Exhibit A – 20.80.690(3)(g)(ii)	Type 2 Production – Type 2 producers shall minimize odors emitted by using best management practices and technology, and all air must go through an odor control system before being vented outdoors. A mechanical	A quick review of The National Air and Filtration Association and I could not find any guidelines for cannabis, nor does it offer any guidelines for any agriculture at all. Furthermore, since it is a National association, and cannabis is still Federally illegal, it is possible that they will refuse to come up with	Type 2 Production – Type 2 producers shall minimize odors emitted by using best management practices and technology, and all air must go through an odor control system before being vented outdoors. A <del>mechanical</del> <del>engineer licensed in</del>	Again, this is nuisance reduction. Requiring an engineer's stamp on mechanical items is standard practice. This language was borrowed from Skagit County, another model the P/C recommended we use.  The new language makes it clear as to what sort of technologies are required to be used to meet the standard but do not rule out improved technologies. This adds clarity for the applicant as well as professional freedom (flexibility) for the engineer.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	engineer licensed in the state of Washington shall design the odor control system using guidance from the National Air Filtration Association and approved by the Building Official. The odor control plan must incorporate a combination of the following site design practices, tools, or other newly improved technologies to mitigate odors:	standards for cannabis. I also googled "National Air Exhibit A – Proposed Marijuana Code Amendments September 15, 2021" and came up with nothing.	<del>the state of Washington shall design the odor control system using guidance from the National Air Filtration Association and approved by the Building Official. The odor control plan must incorporate a combination of the following site design practices, tools, or other newly improved technologies to mitigate odors:</del>	
Exhibit A – 20.97.010	Agriculture. "Agriculture" means the use of land for farming, horticulture, floriculture, viticulture, and the necessary accessory uses for packing, treating or storing the produce; provided, however, that, though the operation of any such accessory uses shall be secondary to that	The legislature of the state of WA decided that "cannabis is not considered agriculture for tax purposes. The 42nd district Rep. Vincent Buys argued against this saying it was a slippery slope to not call a plant a plant. Cannabis is a plant. Cannabis is agriculture. If it's not considered ag, what is it? As national legalization comes around in the near future, it is imperative that Whatcom County is	20.97.010 Agriculture. "Agriculture" means the use of land for farming, horticulture, floriculture, viticulture, and the necessary accessory uses for packing, treating or storing the produce; provided, however, that, though the operation of any such accessory uses shall be secondary to that of	Based on state's declaration of same. We need to maintain consistency w/ state law. Whatcom County has been treating marijuana production as an agricultural type of use (meaning allowing outdoor grows of larger scale where odors cannot be adequately controlled), but that's what led to the complaints and Council's requesting the code update.

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	of normal agricultural activities. However, the production of marijuana is not considered agriculture	set up for this. Stating that cannabis is not agriculture is going backwards, not forwards.	normal agricultural activities. <del>However, the production of marijuana is not considered agriculture</del>	
Exhibit A – 20.97.010.1	Agricultural processing” means the transformation, either chemically or physically, of raw agricultural goods including but not limited to washing, grading, sizing, drying, extracting, icing, producing ornamental agricultural products, sorting, cutting, pressing, bagging, freezing, canning, packaging, milling, crushing, fermenting, aging, pasteurizing, preserving, storage, bottling, but excluding slaughtering of livestock. Agricultural processing	Same as above. This is not good policy.	Agricultural processing” means the transformation, either chemically or physically, of raw agricultural goods including but not limited to washing, grading, sizing, drying, extracting, icing, producing ornamental agricultural products, sorting, cutting, pressing, bagging, freezing, canning, packaging, milling, crushing, fermenting, aging, pasteurizing, preserving, storage, bottling, but excluding slaughtering of livestock. Agricultural processing includes those process steps associated with product preparation	Based on state's declaration of same. We need to maintain consistency w/ state law. Whatcom County has been treating marijuana production and processing as an agricultural type of use (meaning allowing outdoor grows of larger scale where odors cannot be adequately controlled), but that's what led to the complaints and Council's requesting the code update.



SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	includes those process steps associated with product preparation and processing. Storage, warehousing, and distributing products in conjunction with the agricultural processing activity occurring on that site shall be allowed. However, the processing of marijuana is not considered agricultural processing.		and processing. Storage, warehousing, and distributing products in conjunction with the agricultural processing activity occurring on that site shall be allowed. <del>However, the processing of marijuana is not considered agricultural processing.</del>	

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
Exhibit A – 20.97.227	<p>“Marijuana production facility” means 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. A marijuana producer may also produce and sell marijuana plants, seed, and plant tissue culture to other state-licensed marijuana producers. The area of a marijuana production facility includes all the area enclosed within a structure or fence that is required by the state Liquor and Cannabis Board for the production of marijuana. Where limitations</p>	<p>So, if you're a Type 1, on less than 4.5 acres, you can only allocated up to 200 square feet to plant canopy indoors? That's not enough room to be successful. I would remove the 10% stipulation and allow the farmers to have up to 2000 square feet of canopy in their facility with "no flowering plants permitted in this area at any time"</p>	<p>“Marijuana production facility” means 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. A marijuana producer may also produce and sell marijuana plants, seed, and plant tissue culture to other state-licensed marijuana producers. The area of a marijuana production facility includes all the area enclosed within a structure or fence that is required by the state Liquor and Cannabis Board for the production of marijuana. Where limitations on size are imposed pursuant to §20.80.690, the</p>	<p>The 10% allowed is for overwintering plants, not growing. The idea is that Type 1 are "outdoor" grows (1 grow/season). If you want more grow cycles you need artificial lighting, which puts you into a Type 2.</p>

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	<p>on size are imposed pursuant to §20.80.690, the “facility” shall include all structures related to the production or processing of marijuana and any ground in which marijuana is grown. For the purposes of this code:</p> <p>A. “Type 1 Marijuana Outdoor Production Facilities” shall mean production may takes place outdoors, including in an expanse of open or cleared ground, or in non-rigid greenhouses, other structures that have no artificial lighting for aiding in the growth cycle, or an expanse of open or cleared ground fully enclosed by a physical barrier. ; except that Type 1 facilities may allocate up to 10%</p>		<p>“facility” shall include all structures related to the production or processing of marijuana and any ground in which marijuana is grown. For the purposes of this code, Whatcom A. “Type 1 Marijuana Outdoor Production Facilities” shall mean production may takes place outdoors, including in an expanse of open or cleared ground, or in non-rigid greenhouses, other structures that have no artificial lighting for aiding in the growth cycle, or an expanse of open or cleared ground fully enclosed by a physical barrier. ; except that Type 1 facilities may allocate up to <u>2000 square feet of canopy</u> <del>10% of the total square footage</del> of their allowed facility area to genetic preservation and plant</p>	

SECTION	VERBIAGE	NOTES	SUGGESTIONS	PDS Response
	<p>of the total square footage of their allowed facility area to genetic preservation and plant propagation in a designated indoor area with artificial lighting. This area must be clearly identified and described in the permit the application, and is subject to all the supplemental requirements of a Type II Facility; however, no flowering plants are permitted in this area at any time.</p> <p>B. "Indoor Type 2 Marijuana Production Facilities" shall mean production facilities that use artificial lighting for aiding in the growth cycle be within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.</p>		<p>propagation in a designated indoor area with artificial lighting. This area must be clearly identified and described in the permit the application, and is subject to all the supplemental requirements of a Type II Facility; however, no flowering plants are permitted in this area at any time. B. "Indoor Type 2 Marijuana Production Facilities" shall mean production facilities that use artificial lighting for aiding in the growth cycle be within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.</p>	

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6505**

Chapter 140, Laws of 2014

63rd Legislature  
2014 Regular Session

MARIJUANA PRODUCTS--TAXES

EFFECTIVE DATE: 06/12/14 - Except section 4, which becomes effective 07/01/15; section 6, which is contingent; and section 32, which becomes effective 07/01/2020.

Passed by the Senate March 4, 2014  
YEAS 47 NAYS 0

BRAD OWEN

**President of the Senate**

Passed by the House March 12, 2014  
YEAS 55 NAYS 42

FRANK CHOPP

**Speaker of the House of Representatives**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6505** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

Approved March 28, 2014, 3:06 p.m.

FILED

March 31, 2014

JAY INSLEE

**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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SENATE BILL 6505

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Passed Legislature - 2014 Regular Session

State of Washington                      63rd Legislature                      2014 Regular Session

By Senators Hargrove, Hill, and Braun

Read first time 01/30/14. Referred to Committee on Ways & Means.

1            AN ACT Relating to clarifying that marijuana, useable marijuana,  
2            and marijuana-infused products are not agricultural products; amending  
3            RCW 82.04.100, 82.04.260, 82.04.260, 82.04.260, 82.04.260, 82.04.330,  
4            82.04.331, 82.04.4266, 82.04.625, 82.08.010, 82.08.020, 82.08.02565,  
5            82.12.02565, 82.08.0257, 82.12.0258, 82.08.0273, 82.08.02745,  
6            82.08.0281, 82.08.0288, 82.12.0283, 82.08.0293, 82.08.820, 82.14.430,  
7            82.16.050, 82.29A.020, 84.36.630, 84.40.030, 82.02.010, 15.13.270,  
8            15.13.270, 15.17.020, 15.49.061, and 20.01.030; reenacting and amending  
9            RCW 82.04.213; adding a new section to chapter 84.34 RCW; providing  
10           effective dates; providing a contingent effective date; providing  
11           expiration dates; and providing a contingent expiration date.

12           BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13           **Sec. 1.** RCW 82.04.100 and 2001 c 118 s 1 are each amended to read  
14           as follows:

15           "Extractor" means every person who from the person's own land or  
16           from the land of another under a right or license granted by lease or  
17           contract, either directly or by contracting with others for the  
18           necessary labor or mechanical services, for sale or for commercial or  
19           industrial use mines, quarries, takes or produces coal, oil, natural

1 gas, ore, stone, sand, gravel, clay, mineral or other natural resource  
2 product, or fells, cuts or takes timber, Christmas trees other than  
3 plantation Christmas trees, or other natural products, or takes fish,  
4 shellfish, or other sea or inland water foods or products. "Extractor"  
5 does not include persons performing under contract the necessary labor  
6 or mechanical services for others; ~~((or))~~ persons meeting the  
7 definition of farmer under RCW 82.04.213; or persons producing  
8 marijuana.

9       **Sec. 2.** RCW 82.04.213 and 2001 c 118 s 2 and 2001 c 97 s 3 are  
10 each reenacted and amended to read as follows:

11       (1) "Agricultural product" means any product of plant cultivation  
12 or animal husbandry including, but not limited to: A product of  
13 horticulture, grain cultivation, vermiculture, viticulture, or  
14 aquaculture as defined in RCW 15.85.020; plantation Christmas trees;  
15 short-rotation hardwoods as defined in RCW 84.33.035; turf; or any  
16 animal including but not limited to an animal that is a private sector  
17 cultured aquatic product as defined in RCW 15.85.020, or a bird, or  
18 insect, or the substances obtained from such an animal. "Agricultural  
19 product" does not include marijuana, useable marijuana, or marijuana-  
20 infused products, or animals defined as pet animals under RCW  
21 16.70.020.

22       (2) "Farmer" means any person engaged in the business of growing,  
23 raising, or producing, upon the person's own lands or upon the lands in  
24 which the person has a present right of possession, any agricultural  
25 product to be sold. "Farmer" does not include a person growing,  
26 raising, or producing such products for the person's own consumption;  
27 a person selling any animal or substance obtained therefrom in  
28 connection with the person's business of operating a stockyard or a  
29 slaughter or packing house; or a person in respect to the business of  
30 taking, cultivating, or raising timber.

31       (3) The terms "agriculture," "farming," "horticulture,"  
32 "horticultural," and "horticultural product" may not be construed to  
33 include or relate to marijuana, useable marijuana, or marijuana-infused  
34 products unless the applicable term is explicitly defined to include  
35 marijuana, useable marijuana, or marijuana-infused products.

36       (4) "Marijuana," "useable marijuana," and "marijuana-infused  
37 products" have the same meaning as in RCW 69.50.101.

1       **Sec. 3.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 202 are each  
2 amended to read as follows:

3       (1) Upon every person engaging within this state in the business of  
4 manufacturing:

5       (a) Wheat into flour, barley into pearl barley, soybeans into  
6 soybean oil, canola into canola oil, canola meal, or canola by-  
7 products, or sunflower seeds into sunflower oil; as to such persons the  
8 amount of tax with respect to such business is equal to the value of  
9 the flour, pearl barley, oil, canola meal, or canola by-product  
10 manufactured, multiplied by the rate of 0.138 percent;

11       (b) Beginning July 1, 2015, seafood products that remain in a raw,  
12 raw frozen, or raw salted state at the completion of the manufacturing  
13 by that person; or selling manufactured seafood products that remain in  
14 a raw, raw frozen, or raw salted state at the completion of the  
15 manufacturing, to purchasers who transport in the ordinary course of  
16 business the goods out of this state; as to such persons the amount of  
17 tax with respect to such business is equal to the value of the products  
18 manufactured or the gross proceeds derived from such sales, multiplied  
19 by the rate of 0.138 percent. Sellers must keep and preserve records  
20 for the period required by RCW 82.32.070 establishing that the goods  
21 were transported by the purchaser in the ordinary course of business  
22 out of this state;

23       (c)(i) Beginning July 1, 2015, dairy products; or selling dairy  
24 products that the person has manufactured to purchasers who either  
25 transport in the ordinary course of business the goods out of state or  
26 purchasers who use such dairy products as an ingredient or component in  
27 the manufacturing of a dairy product; as to such persons the tax  
28 imposed is equal to the value of the products manufactured or the gross  
29 proceeds derived from such sales multiplied by the rate of 0.138  
30 percent. Sellers must keep and preserve records for the period  
31 required by RCW 82.32.070 establishing that the goods were transported  
32 by the purchaser in the ordinary course of business out of this state  
33 or sold to a manufacturer for use as an ingredient or component in the  
34 manufacturing of a dairy product.

35       (ii) For the purposes of this subsection (1)(c), "dairy products"  
36 means:

37       (A) Products, not including any marijuana-infused product, that as



1 of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts  
2 131, 133, and 135, including by-products from the manufacturing of the  
3 dairy products, such as whey and casein; and

4 (B) Products comprised of not less than seventy percent dairy  
5 products that qualify under (c)(ii)(A) of this subsection, measured by  
6 weight or volume.

7 (iii) The preferential tax rate provided to taxpayers under this  
8 subsection (1)(c) does not apply to sales of dairy products on or after  
9 July 1, 2023, where a dairy product is used by the purchaser as an  
10 ingredient or component in the manufacturing in Washington of a dairy  
11 product;

12 (d)(i) Beginning July 1, 2015, fruits or vegetables by canning,  
13 preserving, freezing, processing, or dehydrating fresh fruits or  
14 vegetables, or selling at wholesale fruits or vegetables manufactured  
15 by the seller by canning, preserving, freezing, processing, or  
16 dehydrating fresh fruits or vegetables and sold to purchasers who  
17 transport in the ordinary course of business the goods out of this  
18 state; as to such persons the amount of tax with respect to such  
19 business is equal to the value of the products manufactured or the  
20 gross proceeds derived from such sales multiplied by the rate of 0.138  
21 percent. Sellers must keep and preserve records for the period  
22 required by RCW 82.32.070 establishing that the goods were transported  
23 by the purchaser in the ordinary course of business out of this state.

24 (ii) For purposes of this subsection (1)(d), "fruits" and  
25 "vegetables" do not include marijuana, useable marijuana, or marijuana-  
26 infused products;

27 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel  
28 feedstock, as those terms are defined in RCW 82.29A.135; as to such  
29 persons the amount of tax with respect to the business is equal to the  
30 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock  
31 manufactured, multiplied by the rate of 0.138 percent; and

32 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such  
33 persons the amount of tax with respect to the business is equal to the  
34 value of wood biomass fuel manufactured, multiplied by the rate of  
35 0.138 percent.

36 (2) Upon every person engaging within this state in the business of  
37 splitting or processing dried peas; as to such persons the amount of

1 tax with respect to such business is equal to the value of the peas  
2 split or processed, multiplied by the rate of 0.138 percent.

3 (3) Upon every nonprofit corporation and nonprofit association  
4 engaging within this state in research and development, as to such  
5 corporations and associations, the amount of tax with respect to such  
6 activities is equal to the gross income derived from such activities  
7 multiplied by the rate of 0.484 percent.

8 (4) Upon every person engaging within this state in the business of  
9 slaughtering, breaking and/or processing perishable meat products  
10 and/or selling the same at wholesale only and not at retail; as to such  
11 persons the tax imposed is equal to the gross proceeds derived from  
12 such sales multiplied by the rate of 0.138 percent.

13 (5) Upon every person engaging within this state in the business of  
14 acting as a travel agent or tour operator; as to such persons the  
15 amount of the tax with respect to such activities is equal to the gross  
16 income derived from such activities multiplied by the rate of 0.275  
17 percent.

18 (6) Upon every person engaging within this state in business as an  
19 international steamship agent, international customs house broker,  
20 international freight forwarder, vessel and/or cargo charter broker in  
21 foreign commerce, and/or international air cargo agent; as to such  
22 persons the amount of the tax with respect to only international  
23 activities is equal to the gross income derived from such activities  
24 multiplied by the rate of 0.275 percent.

25 (7) Upon every person engaging within this state in the business of  
26 stevedoring and associated activities pertinent to the movement of  
27 goods and commodities in waterborne interstate or foreign commerce; as  
28 to such persons the amount of tax with respect to such business is  
29 equal to the gross proceeds derived from such activities multiplied by  
30 the rate of 0.275 percent. Persons subject to taxation under this  
31 subsection are exempt from payment of taxes imposed by chapter 82.16  
32 RCW for that portion of their business subject to taxation under this  
33 subsection. Stevedoring and associated activities pertinent to the  
34 conduct of goods and commodities in waterborne interstate or foreign  
35 commerce are defined as all activities of a labor, service or  
36 transportation nature whereby cargo may be loaded or unloaded to or  
37 from vessels or barges, passing over, onto or under a wharf, pier, or  
38 similar structure; cargo may be moved to a warehouse or similar holding

1 or storage yard or area to await further movement in import or export  
2 or may move to a consolidation freight station and be stuffed,  
3 unstuffed, containerized, separated or otherwise segregated or  
4 aggregated for delivery or loaded on any mode of transportation for  
5 delivery to its consignee. Specific activities included in this  
6 definition are: Wharfage, handling, loading, unloading, moving of  
7 cargo to a convenient place of delivery to the consignee or a  
8 convenient place for further movement to export mode; documentation  
9 services in connection with the receipt, delivery, checking, care,  
10 custody and control of cargo required in the transfer of cargo;  
11 imported automobile handling prior to delivery to consignee; terminal  
12 stevedoring and incidental vessel services, including but not limited  
13 to plugging and unplugging refrigerator service to containers,  
14 trailers, and other refrigerated cargo receptacles, and securing ship  
15 hatch covers.

16 (8) Upon every person engaging within this state in the business of  
17 disposing of low-level waste, as defined in RCW 43.145.010; as to such  
18 persons the amount of the tax with respect to such business is equal to  
19 the gross income of the business, excluding any fees imposed under  
20 chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

21 If the gross income of the taxpayer is attributable to activities  
22 both within and without this state, the gross income attributable to  
23 this state must be determined in accordance with the methods of  
24 apportionment required under RCW 82.04.460.

25 (9) Upon every person engaging within this state as an insurance  
26 producer or title insurance agent licensed under chapter 48.17 RCW or  
27 a surplus line broker licensed under chapter 48.15 RCW; as to such  
28 persons, the amount of the tax with respect to such licensed activities  
29 is equal to the gross income of such business multiplied by the rate of  
30 0.484 percent.

31 (10) Upon every person engaging within this state in business as a  
32 hospital, as defined in chapter 70.41 RCW, that is operated as a  
33 nonprofit corporation or by the state or any of its political  
34 subdivisions, as to such persons, the amount of tax with respect to  
35 such activities is equal to the gross income of the business multiplied  
36 by the rate of 0.75 percent through June 30, 1995, and 1.5 percent  
37 thereafter.

1 (11)(a) Beginning October 1, 2005, upon every person engaging  
2 within this state in the business of manufacturing commercial  
3 airplanes, or components of such airplanes, or making sales, at retail  
4 or wholesale, of commercial airplanes or components of such airplanes,  
5 manufactured by the seller, as to such persons the amount of tax with  
6 respect to such business is, in the case of manufacturers, equal to the  
7 value of the product manufactured and the gross proceeds of sales of  
8 the product manufactured, or in the case of processors for hire, equal  
9 to the gross income of the business, multiplied by the rate of:

10 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

11 (ii) 0.2904 percent beginning July 1, 2007.

12 (b) Beginning July 1, 2008, upon every person who is not eligible  
13 to report under the provisions of (a) of this subsection (11) and is  
14 engaging within this state in the business of manufacturing tooling  
15 specifically designed for use in manufacturing commercial airplanes or  
16 components of such airplanes, or making sales, at retail or wholesale,  
17 of such tooling manufactured by the seller, as to such persons the  
18 amount of tax with respect to such business is, in the case of  
19 manufacturers, equal to the value of the product manufactured and the  
20 gross proceeds of sales of the product manufactured, or in the case of  
21 processors for hire, be equal to the gross income of the business,  
22 multiplied by the rate of 0.2904 percent.

23 (c) For the purposes of this subsection (11), "commercial airplane"  
24 and "component" have the same meanings as provided in RCW 82.32.550.

25 (d) In addition to all other requirements under this title, a  
26 person reporting under the tax rate provided in this subsection (11)  
27 must file a complete annual report with the department under RCW  
28 82.32.534.

29 (e) This subsection (11) does not apply on and after July 1, 2024.

30 (12)(a) Until July 1, 2024, upon every person engaging within this  
31 state in the business of extracting timber or extracting for hire  
32 timber; as to such persons the amount of tax with respect to the  
33 business is, in the case of extractors, equal to the value of products,  
34 including by-products, extracted, or in the case of extractors for  
35 hire, equal to the gross income of the business, multiplied by the rate  
36 of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904  
37 percent from July 1, 2007, through June 30, 2024.

1 (b) Until July 1, 2024, upon every person engaging within this  
2 state in the business of manufacturing or processing for hire: (i)  
3 Timber into timber products or wood products; or (ii) timber products  
4 into other timber products or wood products; as to such persons the  
5 amount of the tax with respect to the business is, in the case of  
6 manufacturers, equal to the value of products, including by-products,  
7 manufactured, or in the case of processors for hire, equal to the gross  
8 income of the business, multiplied by the rate of 0.4235 percent from  
9 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
10 2007, through June 30, 2024.

11 (c) Until July 1, 2024, upon every person engaging within this  
12 state in the business of selling at wholesale: (i) Timber extracted by  
13 that person; (ii) timber products manufactured by that person from  
14 timber or other timber products; or (iii) wood products manufactured by  
15 that person from timber or timber products; as to such persons the  
16 amount of the tax with respect to the business is equal to the gross  
17 proceeds of sales of the timber, timber products, or wood products  
18 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
19 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
20 2024.

21 (d) Until July 1, 2024, upon every person engaging within this  
22 state in the business of selling standing timber; as to such persons  
23 the amount of the tax with respect to the business is equal to the  
24 gross income of the business multiplied by the rate of 0.2904 percent.  
25 For purposes of this subsection (12)(d), "selling standing timber"  
26 means the sale of timber apart from the land, where the buyer is  
27 required to sever the timber within thirty months from the date of the  
28 original contract, regardless of the method of payment for the timber  
29 and whether title to the timber transfers before, upon, or after  
30 severance.

31 (e) For purposes of this subsection, the following definitions  
32 apply:

33 (i) "Biocomposite surface products" means surface material products  
34 containing, by weight or volume, more than fifty percent recycled paper  
35 and that also use nonpetroleum-based phenolic resin as a bonding agent.

36 (ii) "Paper and paper products" means products made of interwoven  
37 cellulosic fibers held together largely by hydrogen bonding. "Paper  
38 and paper products" includes newsprint; office, printing, fine, and

1 pressure-sensitive papers; paper napkins, towels, and toilet tissue;  
2 kraft bag, construction, and other kraft industrial papers; paperboard,  
3 liquid packaging containers, containerboard, corrugated, and solid-  
4 fiber containers including linerboard and corrugated medium; and  
5 related types of cellulosic products containing primarily, by weight or  
6 volume, cellulosic materials. "Paper and paper products" does not  
7 include books, newspapers, magazines, periodicals, and other printed  
8 publications, advertising materials, calendars, and similar types of  
9 printed materials.

10 (iii) "Recycled paper" means paper and paper products having fifty  
11 percent or more of their fiber content that comes from postconsumer  
12 waste. For purposes of this subsection (12)(e)(iii), "postconsumer  
13 waste" means a finished material that would normally be disposed of as  
14 solid waste, having completed its life cycle as a consumer item.

15 (iv) "Timber" means forest trees, standing or down, on privately or  
16 publicly owned land. "Timber" does not include Christmas trees that  
17 are cultivated by agricultural methods or short-rotation hardwoods as  
18 defined in RCW 84.33.035.

19 (v) "Timber products" means:

20 (A) Logs, wood chips, sawdust, wood waste, and similar products  
21 obtained wholly from the processing of timber, short-rotation hardwoods  
22 as defined in RCW 84.33.035, or both;

23 (B) Pulp, including market pulp and pulp derived from recovered  
24 paper or paper products; and

25 (C) Recycled paper, but only when used in the manufacture of  
26 biocomposite surface products.

27 (vi) "Wood products" means paper and paper products; dimensional  
28 lumber; engineered wood products such as particleboard, oriented strand  
29 board, medium density fiberboard, and plywood; wood doors; wood  
30 windows; and biocomposite surface products.

31 (f) Except for small harvesters as defined in RCW 84.33.035, a  
32 person reporting under the tax rate provided in this subsection (12)  
33 must file a complete annual survey with the department under RCW  
34 82.32.585.

35 (13) Upon every person engaging within this state in inspecting,  
36 testing, labeling, and storing canned salmon owned by another person,  
37 as to such persons, the amount of tax with respect to such activities

1 is equal to the gross income derived from such activities multiplied by  
2 the rate of 0.484 percent.

3 (14)(a) Upon every person engaging within this state in the  
4 business of printing a newspaper, publishing a newspaper, or both, the  
5 amount of tax on such business is equal to the gross income of the  
6 business multiplied by the rate of 0.365 percent through June 30, 2013,  
7 and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

8 (b) A person reporting under the tax rate provided in this  
9 subsection (14) must file a complete annual report with the department  
10 under RCW 82.32.534.

11 **Sec. 4.** RCW 82.04.260 and 2013 2nd sp.s. c 13 s 203 are each  
12 amended to read as follows:

13 (1) Upon every person engaging within this state in the business of  
14 manufacturing:

15 (a) Wheat into flour, barley into pearl barley, soybeans into  
16 soybean oil, canola into canola oil, canola meal, or canola by-  
17 products, or sunflower seeds into sunflower oil; as to such persons the  
18 amount of tax with respect to such business is equal to the value of  
19 the flour, pearl barley, oil, canola meal, or canola by-product  
20 manufactured, multiplied by the rate of 0.138 percent;

21 (b) Beginning July 1, 2015, seafood products that remain in a raw,  
22 raw frozen, or raw salted state at the completion of the manufacturing  
23 by that person; or selling manufactured seafood products that remain in  
24 a raw, raw frozen, or raw salted state at the completion of the  
25 manufacturing, to purchasers who transport in the ordinary course of  
26 business the goods out of this state; as to such persons the amount of  
27 tax with respect to such business is equal to the value of the products  
28 manufactured or the gross proceeds derived from such sales, multiplied  
29 by the rate of 0.138 percent. Sellers must keep and preserve records  
30 for the period required by RCW 82.32.070 establishing that the goods  
31 were transported by the purchaser in the ordinary course of business  
32 out of this state;

33 (c)(i) Beginning July 1, 2015, dairy products; or selling dairy  
34 products that the person has manufactured to purchasers who either  
35 transport in the ordinary course of business the goods out of state or  
36 purchasers who use such dairy products as an ingredient or component in  
37 the manufacturing of a dairy product; as to such persons the tax

1 imposed is equal to the value of the products manufactured or the gross  
2 proceeds derived from such sales multiplied by the rate of 0.138  
3 percent. Sellers must keep and preserve records for the period  
4 required by RCW 82.32.070 establishing that the goods were transported  
5 by the purchaser in the ordinary course of business out of this state  
6 or sold to a manufacturer for use as an ingredient or component in the  
7 manufacturing of a dairy product.

8 (ii) For the purposes of this subsection (1)(c), "dairy products"  
9 means:

10 (A) Products, not including any marijuana-infused product, that as  
11 of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts  
12 131, 133, and 135, including by-products from the manufacturing of the  
13 dairy products, such as whey and casein; and

14 (B) Products comprised of not less than seventy percent dairy  
15 products that qualify under (c)(ii)(A) of this subsection, measured by  
16 weight or volume.

17 (iii) The preferential tax rate provided to taxpayers under this  
18 subsection (1)(c) does not apply to sales of dairy products on or after  
19 July 1, 2023, where a dairy product is used by the purchaser as an  
20 ingredient or component in the manufacturing in Washington of a dairy  
21 product;

22 (d)(i) Beginning July 1, 2015, fruits or vegetables by canning,  
23 preserving, freezing, processing, or dehydrating fresh fruits or  
24 vegetables, or selling at wholesale fruits or vegetables manufactured  
25 by the seller by canning, preserving, freezing, processing, or  
26 dehydrating fresh fruits or vegetables and sold to purchasers who  
27 transport in the ordinary course of business the goods out of this  
28 state; as to such persons the amount of tax with respect to such  
29 business is equal to the value of the products manufactured or the  
30 gross proceeds derived from such sales multiplied by the rate of 0.138  
31 percent. Sellers must keep and preserve records for the period  
32 required by RCW 82.32.070 establishing that the goods were transported  
33 by the purchaser in the ordinary course of business out of this state.

34 (ii) For purposes of this subsection (1)(d), "fruits" and  
35 "vegetables" do not include marijuana, useable marijuana, or marijuana-  
36 infused products;

37 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel  
38 feedstock, as those terms are defined in RCW 82.29A.135; as to such



1 persons the amount of tax with respect to the business is equal to the  
2 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock  
3 manufactured, multiplied by the rate of 0.138 percent; and

4 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such  
5 persons the amount of tax with respect to the business is equal to the  
6 value of wood biomass fuel manufactured, multiplied by the rate of  
7 0.138 percent.

8 (2) Upon every person engaging within this state in the business of  
9 splitting or processing dried peas; as to such persons the amount of  
10 tax with respect to such business is equal to the value of the peas  
11 split or processed, multiplied by the rate of 0.138 percent.

12 (3) Upon every nonprofit corporation and nonprofit association  
13 engaging within this state in research and development, as to such  
14 corporations and associations, the amount of tax with respect to such  
15 activities is equal to the gross income derived from such activities  
16 multiplied by the rate of 0.484 percent.

17 (4) Upon every person engaging within this state in the business of  
18 slaughtering, breaking and/or processing perishable meat products  
19 and/or selling the same at wholesale only and not at retail; as to such  
20 persons the tax imposed is equal to the gross proceeds derived from  
21 such sales multiplied by the rate of 0.138 percent.

22 (5) Upon every person engaging within this state in the business of  
23 acting as a travel agent or tour operator; as to such persons the  
24 amount of the tax with respect to such activities is equal to the gross  
25 income derived from such activities multiplied by the rate of 0.275  
26 percent.

27 (6) Upon every person engaging within this state in business as an  
28 international steamship agent, international customs house broker,  
29 international freight forwarder, vessel and/or cargo charter broker in  
30 foreign commerce, and/or international air cargo agent; as to such  
31 persons the amount of the tax with respect to only international  
32 activities is equal to the gross income derived from such activities  
33 multiplied by the rate of 0.275 percent.

34 (7) Upon every person engaging within this state in the business of  
35 stevedoring and associated activities pertinent to the movement of  
36 goods and commodities in waterborne interstate or foreign commerce; as  
37 to such persons the amount of tax with respect to such business is  
38 equal to the gross proceeds derived from such activities multiplied by

1 the rate of 0.275 percent. Persons subject to taxation under this  
2 subsection are exempt from payment of taxes imposed by chapter 82.16  
3 RCW for that portion of their business subject to taxation under this  
4 subsection. Stevedoring and associated activities pertinent to the  
5 conduct of goods and commodities in waterborne interstate or foreign  
6 commerce are defined as all activities of a labor, service or  
7 transportation nature whereby cargo may be loaded or unloaded to or  
8 from vessels or barges, passing over, onto or under a wharf, pier, or  
9 similar structure; cargo may be moved to a warehouse or similar holding  
10 or storage yard or area to await further movement in import or export  
11 or may move to a consolidation freight station and be stuffed,  
12 unstuffed, containerized, separated or otherwise segregated or  
13 aggregated for delivery or loaded on any mode of transportation for  
14 delivery to its consignee. Specific activities included in this  
15 definition are: Wharfage, handling, loading, unloading, moving of  
16 cargo to a convenient place of delivery to the consignee or a  
17 convenient place for further movement to export mode; documentation  
18 services in connection with the receipt, delivery, checking, care,  
19 custody and control of cargo required in the transfer of cargo;  
20 imported automobile handling prior to delivery to consignee; terminal  
21 stevedoring and incidental vessel services, including but not limited  
22 to plugging and unplugging refrigerator service to containers,  
23 trailers, and other refrigerated cargo receptacles, and securing ship  
24 hatch covers.

25 (8) Upon every person engaging within this state in the business of  
26 disposing of low-level waste, as defined in RCW 43.145.010; as to such  
27 persons the amount of the tax with respect to such business is equal to  
28 the gross income of the business, excluding any fees imposed under  
29 chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

30 If the gross income of the taxpayer is attributable to activities  
31 both within and without this state, the gross income attributable to  
32 this state must be determined in accordance with the methods of  
33 apportionment required under RCW 82.04.460.

34 (9) Upon every person engaging within this state as an insurance  
35 producer or title insurance agent licensed under chapter 48.17 RCW or  
36 a surplus line broker licensed under chapter 48.15 RCW; as to such  
37 persons, the amount of the tax with respect to such licensed activities

1 is equal to the gross income of such business multiplied by the rate of  
2 0.484 percent.

3 (10) Upon every person engaging within this state in business as a  
4 hospital, as defined in chapter 70.41 RCW, that is operated as a  
5 nonprofit corporation or by the state or any of its political  
6 subdivisions, as to such persons, the amount of tax with respect to  
7 such activities is equal to the gross income of the business multiplied  
8 by the rate of 0.75 percent through June 30, 1995, and 1.5 percent  
9 thereafter.

10 (11)(a) Beginning October 1, 2005, upon every person engaging  
11 within this state in the business of manufacturing commercial  
12 airplanes, or components of such airplanes, or making sales, at retail  
13 or wholesale, of commercial airplanes or components of such airplanes,  
14 manufactured by the seller, as to such persons the amount of tax with  
15 respect to such business is, in the case of manufacturers, equal to the  
16 value of the product manufactured and the gross proceeds of sales of  
17 the product manufactured, or in the case of processors for hire, equal  
18 to the gross income of the business, multiplied by the rate of:

- 19 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and  
20 (ii) 0.2904 percent beginning July 1, 2007.

21 (b) Beginning July 1, 2008, upon every person who is not eligible  
22 to report under the provisions of (a) of this subsection (11) and is  
23 engaging within this state in the business of manufacturing tooling  
24 specifically designed for use in manufacturing commercial airplanes or  
25 components of such airplanes, or making sales, at retail or wholesale,  
26 of such tooling manufactured by the seller, as to such persons the  
27 amount of tax with respect to such business is, in the case of  
28 manufacturers, equal to the value of the product manufactured and the  
29 gross proceeds of sales of the product manufactured, or in the case of  
30 processors for hire, be equal to the gross income of the business,  
31 multiplied by the rate of 0.2904 percent.

32 (c) For the purposes of this subsection (11), "commercial airplane"  
33 and "component" have the same meanings as provided in RCW 82.32.550.

34 (d) In addition to all other requirements under this title, a  
35 person reporting under the tax rate provided in this subsection (11)  
36 must file a complete annual report with the department under RCW  
37 82.32.534.

38 (e) This subsection (11) does not apply on and after July 1, 2024.

1 (12)(a) Until July 1, 2024, upon every person engaging within this  
2 state in the business of extracting timber or extracting for hire  
3 timber; as to such persons the amount of tax with respect to the  
4 business is, in the case of extractors, equal to the value of products,  
5 including by-products, extracted, or in the case of extractors for  
6 hire, equal to the gross income of the business, multiplied by the rate  
7 of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904  
8 percent from July 1, 2007, through June 30, 2024.

9 (b) Until July 1, 2024, upon every person engaging within this  
10 state in the business of manufacturing or processing for hire: (i)  
11 Timber into timber products or wood products; or (ii) timber products  
12 into other timber products or wood products; as to such persons the  
13 amount of the tax with respect to the business is, in the case of  
14 manufacturers, equal to the value of products, including by-products,  
15 manufactured, or in the case of processors for hire, equal to the gross  
16 income of the business, multiplied by the rate of 0.4235 percent from  
17 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
18 2007, through June 30, 2024.

19 (c) Until July 1, 2024, upon every person engaging within this  
20 state in the business of selling at wholesale: (i) Timber extracted by  
21 that person; (ii) timber products manufactured by that person from  
22 timber or other timber products; or (iii) wood products manufactured by  
23 that person from timber or timber products; as to such persons the  
24 amount of the tax with respect to the business is equal to the gross  
25 proceeds of sales of the timber, timber products, or wood products  
26 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
27 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
28 2024.

29 (d) Until July 1, 2024, upon every person engaging within this  
30 state in the business of selling standing timber; as to such persons  
31 the amount of the tax with respect to the business is equal to the  
32 gross income of the business multiplied by the rate of 0.2904 percent.  
33 For purposes of this subsection (12)(d), "selling standing timber"  
34 means the sale of timber apart from the land, where the buyer is  
35 required to sever the timber within thirty months from the date of the  
36 original contract, regardless of the method of payment for the timber  
37 and whether title to the timber transfers before, upon, or after  
38 severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

1 (f) Except for small harvesters as defined in RCW 84.33.035, a  
2 person reporting under the tax rate provided in this subsection (12)  
3 must file a complete annual survey with the department under RCW  
4 82.32.585.

5 (13) Upon every person engaging within this state in inspecting,  
6 testing, labeling, and storing canned salmon owned by another person,  
7 as to such persons, the amount of tax with respect to such activities  
8 is equal to the gross income derived from such activities multiplied by  
9 the rate of 0.484 percent.

10 (14)(a) Upon every person engaging within this state in the  
11 business of printing a newspaper, publishing a newspaper, or both, the  
12 amount of tax on such business is equal to the gross income of the  
13 business multiplied by the rate of 0.2904 percent.

14 (b) A person reporting under the tax rate provided in this  
15 subsection (14) must file a complete annual report with the department  
16 under RCW 82.32.534.

17 **Sec. 5.** RCW 82.04.260 and 2013 3rd sp.s. c 2 s 5 are each amended  
18 to read as follows:

19 (1) Upon every person engaging within this state in the business of  
20 manufacturing:

21 (a) Wheat into flour, barley into pearl barley, soybeans into  
22 soybean oil, canola into canola oil, canola meal, or canola by-  
23 products, or sunflower seeds into sunflower oil; as to such persons the  
24 amount of tax with respect to such business is equal to the value of  
25 the flour, pearl barley, oil, canola meal, or canola by-product  
26 manufactured, multiplied by the rate of 0.138 percent;

27 (b) Beginning July 1, 2015, seafood products that remain in a raw,  
28 raw frozen, or raw salted state at the completion of the manufacturing  
29 by that person; or selling manufactured seafood products that remain in  
30 a raw, raw frozen, or raw salted state at the completion of the  
31 manufacturing, to purchasers who transport in the ordinary course of  
32 business the goods out of this state; as to such persons the amount of  
33 tax with respect to such business is equal to the value of the products  
34 manufactured or the gross proceeds derived from such sales, multiplied  
35 by the rate of 0.138 percent. Sellers must keep and preserve records  
36 for the period required by RCW 82.32.070 establishing that the goods

1 were transported by the purchaser in the ordinary course of business  
2 out of this state;

3 (c)(i) Beginning July 1, 2015, dairy products; or selling dairy  
4 products that the person has manufactured to purchasers who either  
5 transport in the ordinary course of business the goods out of state or  
6 purchasers who use such dairy products as an ingredient or component in  
7 the manufacturing of a dairy product; as to such persons the tax  
8 imposed is equal to the value of the products manufactured or the gross  
9 proceeds derived from such sales multiplied by the rate of 0.138  
10 percent. Sellers must keep and preserve records for the period  
11 required by RCW 82.32.070 establishing that the goods were transported  
12 by the purchaser in the ordinary course of business out of this state  
13 or sold to a manufacturer for use as an ingredient or component in the  
14 manufacturing of a dairy product.

15 (ii) For the purposes of this subsection (1)(c), "dairy products"  
16 means:

17 (A) Products, not including any marijuana-infused product, that as  
18 of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts  
19 131, 133, and 135, including by-products from the manufacturing of the  
20 dairy products, such as whey and casein; and

21 (B) Products comprised of not less than seventy percent dairy  
22 products that qualify under (c)(ii)(A) of this subsection, measured by  
23 weight or volume.

24 (iii) The preferential tax rate provided to taxpayers under this  
25 subsection (1)(c) does not apply to sales of dairy products on or after  
26 July 1, 2023, where a dairy product is used by the purchaser as an  
27 ingredient or component in the manufacturing in Washington of a dairy  
28 product;

29 (d)(i) Beginning July 1, 2015, fruits or vegetables by canning,  
30 preserving, freezing, processing, or dehydrating fresh fruits or  
31 vegetables, or selling at wholesale fruits or vegetables manufactured  
32 by the seller by canning, preserving, freezing, processing, or  
33 dehydrating fresh fruits or vegetables and sold to purchasers who  
34 transport in the ordinary course of business the goods out of this  
35 state; as to such persons the amount of tax with respect to such  
36 business is equal to the value of the products manufactured or the  
37 gross proceeds derived from such sales multiplied by the rate of 0.138

1 percent. Sellers must keep and preserve records for the period  
2 required by RCW 82.32.070 establishing that the goods were transported  
3 by the purchaser in the ordinary course of business out of this state.

4 (ii) For purposes of this subsection (1)(d), "fruits" and  
5 "vegetables" do not include marijuana, useable marijuana, or marijuana-  
6 infused products;

7 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel  
8 feedstock, as those terms are defined in RCW 82.29A.135; as to such  
9 persons the amount of tax with respect to the business is equal to the  
10 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock  
11 manufactured, multiplied by the rate of 0.138 percent; and

12 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such  
13 persons the amount of tax with respect to the business is equal to the  
14 value of wood biomass fuel manufactured, multiplied by the rate of  
15 0.138 percent.

16 (2) Upon every person engaging within this state in the business of  
17 splitting or processing dried peas; as to such persons the amount of  
18 tax with respect to such business is equal to the value of the peas  
19 split or processed, multiplied by the rate of 0.138 percent.

20 (3) Upon every nonprofit corporation and nonprofit association  
21 engaging within this state in research and development, as to such  
22 corporations and associations, the amount of tax with respect to such  
23 activities is equal to the gross income derived from such activities  
24 multiplied by the rate of 0.484 percent.

25 (4) Upon every person engaging within this state in the business of  
26 slaughtering, breaking and/or processing perishable meat products  
27 and/or selling the same at wholesale only and not at retail; as to such  
28 persons the tax imposed is equal to the gross proceeds derived from  
29 such sales multiplied by the rate of 0.138 percent.

30 (5) Upon every person engaging within this state in the business of  
31 acting as a travel agent or tour operator; as to such persons the  
32 amount of the tax with respect to such activities is equal to the gross  
33 income derived from such activities multiplied by the rate of 0.275  
34 percent.

35 (6) Upon every person engaging within this state in business as an  
36 international steamship agent, international customs house broker,  
37 international freight forwarder, vessel and/or cargo charter broker in  
38 foreign commerce, and/or international air cargo agent; as to such



1 persons the amount of the tax with respect to only international  
2 activities is equal to the gross income derived from such activities  
3 multiplied by the rate of 0.275 percent.

4 (7) Upon every person engaging within this state in the business of  
5 stevedoring and associated activities pertinent to the movement of  
6 goods and commodities in waterborne interstate or foreign commerce; as  
7 to such persons the amount of tax with respect to such business is  
8 equal to the gross proceeds derived from such activities multiplied by  
9 the rate of 0.275 percent. Persons subject to taxation under this  
10 subsection are exempt from payment of taxes imposed by chapter 82.16  
11 RCW for that portion of their business subject to taxation under this  
12 subsection. Stevedoring and associated activities pertinent to the  
13 conduct of goods and commodities in waterborne interstate or foreign  
14 commerce are defined as all activities of a labor, service or  
15 transportation nature whereby cargo may be loaded or unloaded to or  
16 from vessels or barges, passing over, onto or under a wharf, pier, or  
17 similar structure; cargo may be moved to a warehouse or similar holding  
18 or storage yard or area to await further movement in import or export  
19 or may move to a consolidation freight station and be stuffed,  
20 unstuffed, containerized, separated or otherwise segregated or  
21 aggregated for delivery or loaded on any mode of transportation for  
22 delivery to its consignee. Specific activities included in this  
23 definition are: Wharfage, handling, loading, unloading, moving of  
24 cargo to a convenient place of delivery to the consignee or a  
25 convenient place for further movement to export mode; documentation  
26 services in connection with the receipt, delivery, checking, care,  
27 custody and control of cargo required in the transfer of cargo;  
28 imported automobile handling prior to delivery to consignee; terminal  
29 stevedoring and incidental vessel services, including but not limited  
30 to plugging and unplugging refrigerator service to containers,  
31 trailers, and other refrigerated cargo receptacles, and securing ship  
32 hatch covers.

33 (8) Upon every person engaging within this state in the business of  
34 disposing of low-level waste, as defined in RCW 43.145.010; as to such  
35 persons the amount of the tax with respect to such business is equal to  
36 the gross income of the business, excluding any fees imposed under  
37 chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

1       If the gross income of the taxpayer is attributable to activities  
2 both within and without this state, the gross income attributable to  
3 this state must be determined in accordance with the methods of  
4 apportionment required under RCW 82.04.460.

5       (9) Upon every person engaging within this state as an insurance  
6 producer or title insurance agent licensed under chapter 48.17 RCW or  
7 a surplus line broker licensed under chapter 48.15 RCW; as to such  
8 persons, the amount of the tax with respect to such licensed activities  
9 is equal to the gross income of such business multiplied by the rate of  
10 0.484 percent.

11       (10) Upon every person engaging within this state in business as a  
12 hospital, as defined in chapter 70.41 RCW, that is operated as a  
13 nonprofit corporation or by the state or any of its political  
14 subdivisions, as to such persons, the amount of tax with respect to  
15 such activities is equal to the gross income of the business multiplied  
16 by the rate of 0.75 percent through June 30, 1995, and 1.5 percent  
17 thereafter.

18       (11)(a) Beginning October 1, 2005, upon every person engaging  
19 within this state in the business of manufacturing commercial  
20 airplanes, or components of such airplanes, or making sales, at retail  
21 or wholesale, of commercial airplanes or components of such airplanes,  
22 manufactured by the seller, as to such persons the amount of tax with  
23 respect to such business is, in the case of manufacturers, equal to the  
24 value of the product manufactured and the gross proceeds of sales of  
25 the product manufactured, or in the case of processors for hire, equal  
26 to the gross income of the business, multiplied by the rate of:

27       (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

28       (ii) 0.2904 percent beginning July 1, 2007.

29       (b) Beginning July 1, 2008, upon every person who is not eligible  
30 to report under the provisions of (a) of this subsection (11) and is  
31 engaging within this state in the business of manufacturing tooling  
32 specifically designed for use in manufacturing commercial airplanes or  
33 components of such airplanes, or making sales, at retail or wholesale,  
34 of such tooling manufactured by the seller, as to such persons the  
35 amount of tax with respect to such business is, in the case of  
36 manufacturers, equal to the value of the product manufactured and the  
37 gross proceeds of sales of the product manufactured, or in the case of

1 processors for hire, be equal to the gross income of the business,  
2 multiplied by the rate of 0.2904 percent.

3 (c) For the purposes of this subsection (11), "commercial airplane"  
4 and "component" have the same meanings as provided in RCW 82.32.550.

5 (d) In addition to all other requirements under this title, a  
6 person reporting under the tax rate provided in this subsection (11)  
7 must file a complete annual report with the department under RCW  
8 82.32.534.

9 (e)(i) Except as provided in (e)(ii) of this subsection (11), this  
10 subsection (11) does not apply on and after July 1, 2040.

11 (ii) With respect to the manufacturing of commercial airplanes or  
12 making sales, at retail or wholesale, of commercial airplanes, this  
13 subsection (11) does not apply on and after July 1st of the year in  
14 which the department makes a determination that any final assembly or  
15 wing assembly of any version or variant of a commercial airplane that  
16 is the basis of a siting of a significant commercial airplane  
17 manufacturing program in the state under RCW 82.32.850 has been sited  
18 outside the state of Washington. This subsection (11)(e)(ii) only  
19 applies to the manufacturing or sale of commercial airplanes that are  
20 the basis of a siting of a significant commercial airplane  
21 manufacturing program in the state under RCW 82.32.850.

22 (12)(a) Until July 1, 2024, upon every person engaging within this  
23 state in the business of extracting timber or extracting for hire  
24 timber; as to such persons the amount of tax with respect to the  
25 business is, in the case of extractors, equal to the value of products,  
26 including by-products, extracted, or in the case of extractors for  
27 hire, equal to the gross income of the business, multiplied by the rate  
28 of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904  
29 percent from July 1, 2007, through June 30, 2024.

30 (b) Until July 1, 2024, upon every person engaging within this  
31 state in the business of manufacturing or processing for hire: (i)  
32 Timber into timber products or wood products; or (ii) timber products  
33 into other timber products or wood products; as to such persons the  
34 amount of the tax with respect to the business is, in the case of  
35 manufacturers, equal to the value of products, including by-products,  
36 manufactured, or in the case of processors for hire, equal to the gross  
37 income of the business, multiplied by the rate of 0.4235 percent from

1 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
2 2007, through June 30, 2024.

3 (c) Until July 1, 2024, upon every person engaging within this  
4 state in the business of selling at wholesale: (i) Timber extracted by  
5 that person; (ii) timber products manufactured by that person from  
6 timber or other timber products; or (iii) wood products manufactured by  
7 that person from timber or timber products; as to such persons the  
8 amount of the tax with respect to the business is equal to the gross  
9 proceeds of sales of the timber, timber products, or wood products  
10 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
11 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
12 2024.

13 (d) Until July 1, 2024, upon every person engaging within this  
14 state in the business of selling standing timber; as to such persons  
15 the amount of the tax with respect to the business is equal to the  
16 gross income of the business multiplied by the rate of 0.2904 percent.  
17 For purposes of this subsection (12)(d), "selling standing timber"  
18 means the sale of timber apart from the land, where the buyer is  
19 required to sever the timber within thirty months from the date of the  
20 original contract, regardless of the method of payment for the timber  
21 and whether title to the timber transfers before, upon, or after  
22 severance.

23 (e) For purposes of this subsection, the following definitions  
24 apply:

25 (i) "Biocomposite surface products" means surface material products  
26 containing, by weight or volume, more than fifty percent recycled paper  
27 and that also use nonpetroleum-based phenolic resin as a bonding agent.

28 (ii) "Paper and paper products" means products made of interwoven  
29 cellulosic fibers held together largely by hydrogen bonding. "Paper  
30 and paper products" includes newsprint; office, printing, fine, and  
31 pressure-sensitive papers; paper napkins, towels, and toilet tissue;  
32 kraft bag, construction, and other kraft industrial papers; paperboard,  
33 liquid packaging containers, containerboard, corrugated, and solid-  
34 fiber containers including linerboard and corrugated medium; and  
35 related types of cellulosic products containing primarily, by weight or  
36 volume, cellulosic materials. "Paper and paper products" does not  
37 include books, newspapers, magazines, periodicals, and other printed

1 publications, advertising materials, calendars, and similar types of  
2 printed materials.

3 (iii) "Recycled paper" means paper and paper products having fifty  
4 percent or more of their fiber content that comes from postconsumer  
5 waste. For purposes of this subsection (12)(e)(iii), "postconsumer  
6 waste" means a finished material that would normally be disposed of as  
7 solid waste, having completed its life cycle as a consumer item.

8 (iv) "Timber" means forest trees, standing or down, on privately or  
9 publicly owned land. "Timber" does not include Christmas trees that  
10 are cultivated by agricultural methods or short-rotation hardwoods as  
11 defined in RCW 84.33.035.

12 (v) "Timber products" means:

13 (A) Logs, wood chips, sawdust, wood waste, and similar products  
14 obtained wholly from the processing of timber, short-rotation hardwoods  
15 as defined in RCW 84.33.035, or both;

16 (B) Pulp, including market pulp and pulp derived from recovered  
17 paper or paper products; and

18 (C) Recycled paper, but only when used in the manufacture of  
19 biocomposite surface products.

20 (vi) "Wood products" means paper and paper products; dimensional  
21 lumber; engineered wood products such as particleboard, oriented strand  
22 board, medium density fiberboard, and plywood; wood doors; wood  
23 windows; and biocomposite surface products.

24 (f) Except for small harvesters as defined in RCW 84.33.035, a  
25 person reporting under the tax rate provided in this subsection (12)  
26 must file a complete annual survey with the department under RCW  
27 82.32.585.

28 (13) Upon every person engaging within this state in inspecting,  
29 testing, labeling, and storing canned salmon owned by another person,  
30 as to such persons, the amount of tax with respect to such activities  
31 is equal to the gross income derived from such activities multiplied by  
32 the rate of 0.484 percent.

33 (14)(a) Upon every person engaging within this state in the  
34 business of printing a newspaper, publishing a newspaper, or both, the  
35 amount of tax on such business is equal to the gross income of the  
36 business multiplied by the rate of 0.365 percent through June 30, 2013,  
37 and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

1 (b) A person reporting under the tax rate provided in this  
2 subsection (14) must file a complete annual report with the department  
3 under RCW 82.32.534.

4 **Sec. 6.** RCW 82.04.260 and 2013 3rd sp.s. c 2 s 6 are each amended  
5 to read as follows:

6 (1) Upon every person engaging within this state in the business of  
7 manufacturing:

8 (a) Wheat into flour, barley into pearl barley, soybeans into  
9 soybean oil, canola into canola oil, canola meal, or canola by-  
10 products, or sunflower seeds into sunflower oil; as to such persons the  
11 amount of tax with respect to such business is equal to the value of  
12 the flour, pearl barley, oil, canola meal, or canola by-product  
13 manufactured, multiplied by the rate of 0.138 percent;

14 (b) Beginning July 1, 2015, seafood products that remain in a raw,  
15 raw frozen, or raw salted state at the completion of the manufacturing  
16 by that person; or selling manufactured seafood products that remain in  
17 a raw, raw frozen, or raw salted state at the completion of the  
18 manufacturing, to purchasers who transport in the ordinary course of  
19 business the goods out of this state; as to such persons the amount of  
20 tax with respect to such business is equal to the value of the products  
21 manufactured or the gross proceeds derived from such sales, multiplied  
22 by the rate of 0.138 percent. Sellers must keep and preserve records  
23 for the period required by RCW 82.32.070 establishing that the goods  
24 were transported by the purchaser in the ordinary course of business  
25 out of this state;

26 (c)(i) Beginning July 1, 2015, dairy products; or selling dairy  
27 products that the person has manufactured to purchasers who either  
28 transport in the ordinary course of business the goods out of state or  
29 purchasers who use such dairy products as an ingredient or component in  
30 the manufacturing of a dairy product; as to such persons the tax  
31 imposed is equal to the value of the products manufactured or the gross  
32 proceeds derived from such sales multiplied by the rate of 0.138  
33 percent. Sellers must keep and preserve records for the period  
34 required by RCW 82.32.070 establishing that the goods were transported  
35 by the purchaser in the ordinary course of business out of this state  
36 or sold to a manufacturer for use as an ingredient or component in the  
37 manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

1       (2) Upon every person engaging within this state in the business of  
2 splitting or processing dried peas; as to such persons the amount of  
3 tax with respect to such business is equal to the value of the peas  
4 split or processed, multiplied by the rate of 0.138 percent.

5       (3) Upon every nonprofit corporation and nonprofit association  
6 engaging within this state in research and development, as to such  
7 corporations and associations, the amount of tax with respect to such  
8 activities is equal to the gross income derived from such activities  
9 multiplied by the rate of 0.484 percent.

10       (4) Upon every person engaging within this state in the business of  
11 slaughtering, breaking and/or processing perishable meat products  
12 and/or selling the same at wholesale only and not at retail; as to such  
13 persons the tax imposed is equal to the gross proceeds derived from  
14 such sales multiplied by the rate of 0.138 percent.

15       (5) Upon every person engaging within this state in the business of  
16 acting as a travel agent or tour operator; as to such persons the  
17 amount of the tax with respect to such activities is equal to the gross  
18 income derived from such activities multiplied by the rate of 0.275  
19 percent.

20       (6) Upon every person engaging within this state in business as an  
21 international steamship agent, international customs house broker,  
22 international freight forwarder, vessel and/or cargo charter broker in  
23 foreign commerce, and/or international air cargo agent; as to such  
24 persons the amount of the tax with respect to only international  
25 activities is equal to the gross income derived from such activities  
26 multiplied by the rate of 0.275 percent.

27       (7) Upon every person engaging within this state in the business of  
28 stevedoring and associated activities pertinent to the movement of  
29 goods and commodities in waterborne interstate or foreign commerce; as  
30 to such persons the amount of tax with respect to such business is  
31 equal to the gross proceeds derived from such activities multiplied by  
32 the rate of 0.275 percent. Persons subject to taxation under this  
33 subsection are exempt from payment of taxes imposed by chapter 82.16  
34 RCW for that portion of their business subject to taxation under this  
35 subsection. Stevedoring and associated activities pertinent to the  
36 conduct of goods and commodities in waterborne interstate or foreign  
37 commerce are defined as all activities of a labor, service or  
38 transportation nature whereby cargo may be loaded or unloaded to or



1 from vessels or barges, passing over, onto or under a wharf, pier, or  
2 similar structure; cargo may be moved to a warehouse or similar holding  
3 or storage yard or area to await further movement in import or export  
4 or may move to a consolidation freight station and be stuffed,  
5 unstuffed, containerized, separated or otherwise segregated or  
6 aggregated for delivery or loaded on any mode of transportation for  
7 delivery to its consignee. Specific activities included in this  
8 definition are: Wharfage, handling, loading, unloading, moving of  
9 cargo to a convenient place of delivery to the consignee or a  
10 convenient place for further movement to export mode; documentation  
11 services in connection with the receipt, delivery, checking, care,  
12 custody and control of cargo required in the transfer of cargo;  
13 imported automobile handling prior to delivery to consignee; terminal  
14 stevedoring and incidental vessel services, including but not limited  
15 to plugging and unplugging refrigerator service to containers,  
16 trailers, and other refrigerated cargo receptacles, and securing ship  
17 hatch covers.

18 (8) Upon every person engaging within this state in the business of  
19 disposing of low-level waste, as defined in RCW 43.145.010; as to such  
20 persons the amount of the tax with respect to such business is equal to  
21 the gross income of the business, excluding any fees imposed under  
22 chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

23 If the gross income of the taxpayer is attributable to activities  
24 both within and without this state, the gross income attributable to  
25 this state must be determined in accordance with the methods of  
26 apportionment required under RCW 82.04.460.

27 (9) Upon every person engaging within this state as an insurance  
28 producer or title insurance agent licensed under chapter 48.17 RCW or  
29 a surplus line broker licensed under chapter 48.15 RCW; as to such  
30 persons, the amount of the tax with respect to such licensed activities  
31 is equal to the gross income of such business multiplied by the rate of  
32 0.484 percent.

33 (10) Upon every person engaging within this state in business as a  
34 hospital, as defined in chapter 70.41 RCW, that is operated as a  
35 nonprofit corporation or by the state or any of its political  
36 subdivisions, as to such persons, the amount of tax with respect to  
37 such activities is equal to the gross income of the business multiplied

1 by the rate of 0.75 percent through June 30, 1995, and 1.5 percent  
2 thereafter.

3 (11)(a) Beginning October 1, 2005, upon every person engaging  
4 within this state in the business of manufacturing commercial  
5 airplanes, or components of such airplanes, or making sales, at retail  
6 or wholesale, of commercial airplanes or components of such airplanes,  
7 manufactured by the seller, as to such persons the amount of tax with  
8 respect to such business is, in the case of manufacturers, equal to the  
9 value of the product manufactured and the gross proceeds of sales of  
10 the product manufactured, or in the case of processors for hire, equal  
11 to the gross income of the business, multiplied by the rate of:

12 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

13 (ii) 0.2904 percent beginning July 1, 2007.

14 (b) Beginning July 1, 2008, upon every person who is not eligible  
15 to report under the provisions of (a) of this subsection (11) and is  
16 engaging within this state in the business of manufacturing tooling  
17 specifically designed for use in manufacturing commercial airplanes or  
18 components of such airplanes, or making sales, at retail or wholesale,  
19 of such tooling manufactured by the seller, as to such persons the  
20 amount of tax with respect to such business is, in the case of  
21 manufacturers, equal to the value of the product manufactured and the  
22 gross proceeds of sales of the product manufactured, or in the case of  
23 processors for hire, be equal to the gross income of the business,  
24 multiplied by the rate of 0.2904 percent.

25 (c) For the purposes of this subsection (11), "commercial airplane"  
26 and "component" have the same meanings as provided in RCW 82.32.550.

27 (d) In addition to all other requirements under this title, a  
28 person reporting under the tax rate provided in this subsection (11)  
29 must file a complete annual report with the department under RCW  
30 82.32.534.

31 (e)(i) Except as provided in (e)(ii) of this subsection (11), this  
32 subsection (11) does not apply on and after July 1, 2040.

33 (ii) With respect to the manufacturing of commercial airplanes or  
34 making sales, at retail or wholesale, of commercial airplanes, this  
35 subsection (11) does not apply on and after July 1st of the year in  
36 which the department makes a determination that any final assembly or  
37 wing assembly of any version or variant of a commercial airplane that  
38 is the basis of a siting of a significant commercial airplane

1 manufacturing program in the state under RCW 82.32.850 has been sited  
2 outside the state of Washington. This subsection (11)(e)(ii) only  
3 applies to the manufacturing or sale of commercial airplanes that are  
4 the basis of a siting of a significant commercial airplane  
5 manufacturing program in the state under RCW 82.32.850.

6 (12)(a) Until July 1, 2024, upon every person engaging within this  
7 state in the business of extracting timber or extracting for hire  
8 timber; as to such persons the amount of tax with respect to the  
9 business is, in the case of extractors, equal to the value of products,  
10 including by-products, extracted, or in the case of extractors for  
11 hire, equal to the gross income of the business, multiplied by the rate  
12 of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904  
13 percent from July 1, 2007, through June 30, 2024.

14 (b) Until July 1, 2024, upon every person engaging within this  
15 state in the business of manufacturing or processing for hire: (i)  
16 Timber into timber products or wood products; or (ii) timber products  
17 into other timber products or wood products; as to such persons the  
18 amount of the tax with respect to the business is, in the case of  
19 manufacturers, equal to the value of products, including by-products,  
20 manufactured, or in the case of processors for hire, equal to the gross  
21 income of the business, multiplied by the rate of 0.4235 percent from  
22 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,  
23 2007, through June 30, 2024.

24 (c) Until July 1, 2024, upon every person engaging within this  
25 state in the business of selling at wholesale: (i) Timber extracted by  
26 that person; (ii) timber products manufactured by that person from  
27 timber or other timber products; or (iii) wood products manufactured by  
28 that person from timber or timber products; as to such persons the  
29 amount of the tax with respect to the business is equal to the gross  
30 proceeds of sales of the timber, timber products, or wood products  
31 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
32 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
33 2024.

34 (d) Until July 1, 2024, upon every person engaging within this  
35 state in the business of selling standing timber; as to such persons  
36 the amount of the tax with respect to the business is equal to the  
37 gross income of the business multiplied by the rate of 0.2904 percent.  
38 For purposes of this subsection (12)(d), "selling standing timber"

1 means the sale of timber apart from the land, where the buyer is  
2 required to sever the timber within thirty months from the date of the  
3 original contract, regardless of the method of payment for the timber  
4 and whether title to the timber transfers before, upon, or after  
5 severance.

6 (e) For purposes of this subsection, the following definitions  
7 apply:

8 (i) "Biocomposite surface products" means surface material products  
9 containing, by weight or volume, more than fifty percent recycled paper  
10 and that also use nonpetroleum-based phenolic resin as a bonding agent.

11 (ii) "Paper and paper products" means products made of interwoven  
12 cellulosic fibers held together largely by hydrogen bonding. "Paper  
13 and paper products" includes newsprint; office, printing, fine, and  
14 pressure-sensitive papers; paper napkins, towels, and toilet tissue;  
15 kraft bag, construction, and other kraft industrial papers; paperboard,  
16 liquid packaging containers, containerboard, corrugated, and solid-  
17 fiber containers including linerboard and corrugated medium; and  
18 related types of cellulosic products containing primarily, by weight or  
19 volume, cellulosic materials. "Paper and paper products" does not  
20 include books, newspapers, magazines, periodicals, and other printed  
21 publications, advertising materials, calendars, and similar types of  
22 printed materials.

23 (iii) "Recycled paper" means paper and paper products having fifty  
24 percent or more of their fiber content that comes from postconsumer  
25 waste. For purposes of this subsection (12)(e)(iii), "postconsumer  
26 waste" means a finished material that would normally be disposed of as  
27 solid waste, having completed its life cycle as a consumer item.

28 (iv) "Timber" means forest trees, standing or down, on privately or  
29 publicly owned land. "Timber" does not include Christmas trees that  
30 are cultivated by agricultural methods or short-rotation hardwoods as  
31 defined in RCW 84.33.035.

32 (v) "Timber products" means:

33 (A) Logs, wood chips, sawdust, wood waste, and similar products  
34 obtained wholly from the processing of timber, short-rotation hardwoods  
35 as defined in RCW 84.33.035, or both;

36 (B) Pulp, including market pulp and pulp derived from recovered  
37 paper or paper products; and

1 (C) Recycled paper, but only when used in the manufacture of  
2 biocomposite surface products.

3 (vi) "Wood products" means paper and paper products; dimensional  
4 lumber; engineered wood products such as particleboard, oriented strand  
5 board, medium density fiberboard, and plywood; wood doors; wood  
6 windows; and biocomposite surface products.

7 (f) Except for small harvesters as defined in RCW 84.33.035, a  
8 person reporting under the tax rate provided in this subsection (12)  
9 must file a complete annual survey with the department under RCW  
10 82.32.585.

11 (13) Upon every person engaging within this state in inspecting,  
12 testing, labeling, and storing canned salmon owned by another person,  
13 as to such persons, the amount of tax with respect to such activities  
14 is equal to the gross income derived from such activities multiplied by  
15 the rate of 0.484 percent.

16 (14)(a) Upon every person engaging within this state in the  
17 business of printing a newspaper, publishing a newspaper, or both, the  
18 amount of tax on such business is equal to the gross income of the  
19 business multiplied by the rate of 0.2904 percent.

20 (b) A person reporting under the tax rate provided in this  
21 subsection (14) must file a complete annual report with the department  
22 under RCW 82.32.534.

23 **Sec. 7.** RCW 82.04.330 and 2001 c 118 s 3 are each amended to read  
24 as follows:

25 (1) This chapter (~~((shall))~~) does not apply to any farmer (~~((that~~  
26 ~~sells))~~) in respect to the sale of any agricultural product at wholesale  
27 or to any farmer who grows, raises, or produces agricultural products  
28 owned by others, such as custom feed operations. This exemption  
29 (~~((shall))~~) does not apply to any person selling such products at retail  
30 or to any person selling manufactured substances or articles.

31 (2) This chapter (~~((shall))~~) also does not apply to any persons who  
32 participate in the federal conservation reserve program or its  
33 successor administered by the United States department of agriculture  
34 with respect to land enrolled in that program.

35 **Sec. 8.** RCW 82.04.331 and 1998 c 170 s 2 are each amended to read  
36 as follows:

1 (1) This chapter does not apply to amounts received by a person  
2 engaging within this state in the business of: (a) Making wholesale  
3 sales to farmers of seed conditioned for use in planting and not  
4 packaged for retail sale; or (b) conditioning seed for planting owned  
5 by others.

6 (2) For the purposes of this section, "seed" means seed potatoes  
7 and all other "agricultural seed" as defined in RCW 15.49.011. "Seed"  
8 does not include "flower seeds" or "vegetable seeds" as defined in RCW  
9 15.49.011, or any other seeds or propagative portions of plants used to  
10 grow marijuana, ornamental flowers, or ~~((used to grow))~~ any type of  
11 bush, moss, fern, shrub, or tree.

12 **Sec. 9.** RCW 82.04.4266 and 2012 2nd sp.s. c 6 s 201 are each  
13 amended to read as follows:

14 (1) This chapter does not apply to the value of products or the  
15 gross proceeds of sales derived from:

16 (a) Manufacturing fruits or vegetables by canning, preserving,  
17 freezing, processing, or dehydrating fresh fruits or vegetables; or

18 (b) Selling at wholesale fruits or vegetables manufactured by the  
19 seller by canning, preserving, freezing, processing, or dehydrating  
20 fresh fruits or vegetables and sold to purchasers who transport in the  
21 ordinary course of business the goods out of this state. A person  
22 taking an exemption under this subsection (1)(b) must keep and preserve  
23 records for the period required by RCW 82.32.070 establishing that the  
24 goods were transported by the purchaser in the ordinary course of  
25 business out of this state.

26 (2) For purposes of this section, "fruits" and "vegetables" do not  
27 include marijuana, useable marijuana, or marijuana-infused products.

28 (3) A person claiming the exemption provided in this section must  
29 file a complete annual survey with the department under RCW 82.32.585.

30 ~~((+3+))~~ (4) This section expires July 1, 2015.

31 **Sec. 10.** RCW 82.04.625 and 2007 c 334 s 1 are each amended to read  
32 as follows:

33 (1) This chapter does not apply to any:

34 (a) Person performing custom farming services for a farmer, when  
35 the person performing the custom farming services is: (i) An eligible  
36 farmer; or (ii) at least fifty percent owned by an eligible farmer; or

1 (b) Person performing farm management services, contract labor  
2 services, services provided with respect to animals that are  
3 agricultural products, or any combination of these services, for a  
4 farmer or for a person performing custom farming services, when the  
5 person performing the farm management services, contract labor  
6 services, services with respect to animals, or any combination of these  
7 services, and the farmer or person performing custom farming services  
8 are related.

9 (2) The definitions in this subsection apply throughout this  
10 section.

11 (a)(i) "Custom farming services" means the performance of specific  
12 farming operations through the use of any farm machinery or equipment,  
13 farm implement, or draft animal, together with an operator, when: (i)  
14 The specific farming operation consists of activities directly related  
15 to the growing, raising, or producing of any agricultural product to be  
16 sold or consumed by a farmer; and (ii) the performance of the specific  
17 farming operation is for, and under a contract with, or the direction  
18 or supervision of, a farmer. "Custom farming services" does not  
19 include the custom application of fertilizers, chemicals, or  
20 biologicals, or any services related to the growing, raising, or  
21 producing of marijuana.

22 (ii) For the purposes of this subsection (2)(a), "specific farming  
23 operation" includes specific planting, cultivating, or harvesting  
24 activities, or similar specific farming operations. The term does not  
25 include veterinary services as defined in RCW 18.92.010; farrier,  
26 boarding, training, or appraisal services; artificial insemination or  
27 stud services, agricultural consulting services; packing or processing  
28 of agricultural products; or pumping or other waste disposal services.

29 (b) "Eligible farmer" means a person who is eligible for an  
30 exemption certificate under RCW 82.08.855 at the time that the custom  
31 farming services are rendered, regardless of whether the person has  
32 applied for an exemption certificate under RCW 82.08.855.

33 (c) "Farm management services" means the consultative decisions  
34 made for the operations of the farm including, but not limited to,  
35 determining which crops to plant, the choice and timing of application  
36 of fertilizers and chemicals, the horticultural practices to apply, the  
37 marketing of crops and livestock, and the care and feeding of animals.

1 "Farm management services" does not include any services related to the  
2 growing, raising, or producing of marijuana.

3 (d) "Related" means having any of the relationships specifically  
4 described in section 267(b) (1), (2), and (4) through (13) of the  
5 internal revenue code, as amended or renumbered as of January 1, 2007.

6 **Sec. 11.** RCW 82.08.010 and 2010 c 106 s 210 are each amended to  
7 read as follows:

8 For the purposes of this chapter:

9 (1)(a)(i) "Selling price" includes "sales price." "Sales price"  
10 means the total amount of consideration, except separately stated  
11 trade-in property of like kind, including cash, credit, property, and  
12 services, for which tangible personal property, extended warranties,  
13 digital goods, digital codes, digital automated services, or other  
14 services or anything else defined as a "retail sale" under RCW  
15 82.04.050 are sold, leased, or rented, valued in money, whether  
16 received in money or otherwise. No deduction from the total amount of  
17 consideration is allowed for the following: ((+i+)) (A) The seller's  
18 cost of the property sold; ((+ii+)) (B) the cost of materials used,  
19 labor or service cost, interest, losses, all costs of transportation to  
20 the seller, all taxes imposed on the seller, and any other expense of  
21 the seller; ((+iii+)) (C) charges by the seller for any services  
22 necessary to complete the sale, other than delivery and installation  
23 charges; ((+iv+)) (D) delivery charges; and ((+v+)) (E) installation  
24 charges.

25 (ii) When tangible personal property is rented or leased under  
26 circumstances that the consideration paid does not represent a  
27 reasonable rental for the use of the articles so rented or leased, the  
28 "selling price" ((shall)) must be determined as nearly as possible  
29 according to the value of such use at the places of use of similar  
30 products of like quality and character under such rules as the  
31 department may prescribe;

32 (b) "Selling price" or "sales price" does not include: Discounts,  
33 including cash, term, or coupons that are not reimbursed by a third  
34 party that are allowed by a seller and taken by a purchaser on a sale;  
35 interest, financing, and carrying charges from credit extended on the  
36 sale of tangible personal property, extended warranties, digital goods,  
37 digital codes, digital automated services, or other services or



1 anything else defined as a retail sale in RCW 82.04.050, if the amount  
2 is separately stated on the invoice, bill of sale, or similar document  
3 given to the purchaser; and any taxes legally imposed directly on the  
4 consumer that are separately stated on the invoice, bill of sale, or  
5 similar document given to the purchaser;

6 (c) "Selling price" or "sales price" includes consideration  
7 received by the seller from a third party if:

8 (i) The seller actually receives consideration from a party other  
9 than the purchaser, and the consideration is directly related to a  
10 price reduction or discount on the sale;

11 (ii) The seller has an obligation to pass the price reduction or  
12 discount through to the purchaser;

13 (iii) The amount of the consideration attributable to the sale is  
14 fixed and determinable by the seller at the time of the sale of the  
15 item to the purchaser; and

16 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

17 (A) The purchaser presents a coupon, certificate, or other  
18 documentation to the seller to claim a price reduction or discount  
19 where the coupon, certificate, or documentation is authorized,  
20 distributed, or granted by a third party with the understanding that  
21 the third party will reimburse any seller to whom the coupon,  
22 certificate, or documentation is presented;

23 (B) The purchaser identifies himself or herself to the seller as a  
24 member of a group or organization entitled to a price reduction or  
25 discount, however a "preferred customer" card that is available to any  
26 patron does not constitute membership in such a group; or

27 (C) The price reduction or discount is identified as a third party  
28 price reduction or discount on the invoice received by the purchaser or  
29 on a coupon, certificate, or other documentation presented by the  
30 purchaser;

31 (2)(a) "Seller" means every person, including the state and its  
32 departments and institutions, making sales at retail or retail sales to  
33 a buyer, purchaser, or consumer, whether as agent, broker, or  
34 principal, except "seller" does not mean:

35 (i) The state and its departments and institutions when making  
36 sales to the state and its departments and institutions; or

37 (ii) A professional employer organization when a covered employee  
38 coemployed with the client under the terms of a professional employer

1 agreement engages in activities that constitute a sale at retail that  
2 is subject to the tax imposed by this chapter. In such cases, the  
3 client, and not the professional employer organization, is deemed to be  
4 the seller and is responsible for collecting and remitting the tax  
5 imposed by this chapter.

6 (b) For the purposes of (a) of this subsection, the terms "client,"  
7 "covered employee," "professional employer agreement," and  
8 "professional employer organization" have the same meanings as in RCW  
9 82.04.540;

10 (3) "Buyer," "purchaser," and "consumer" include, without limiting  
11 the scope hereof, every individual, receiver, assignee, trustee in  
12 bankruptcy, trust, estate, firm, copartnership, joint venture, club,  
13 company, joint stock company, business trust, corporation, association,  
14 society, or any group of individuals acting as a unit, whether mutual,  
15 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,  
16 quasi municipal corporation, and also the state, its departments and  
17 institutions and all political subdivisions thereof, irrespective of  
18 the nature of the activities engaged in or functions performed, and  
19 also the United States or any instrumentality thereof;

20 (4) "Delivery charges" means charges by the seller of personal  
21 property or services for preparation and delivery to a location  
22 designated by the purchaser of personal property or services including,  
23 but not limited to, transportation, shipping, postage, handling,  
24 crating, and packing;

25 (5) "Direct mail" means printed material delivered or distributed  
26 by United States mail or other delivery service to a mass audience or  
27 to addressees on a mailing list provided by the purchaser or at the  
28 direction of the purchaser when the cost of the items are not billed  
29 directly to the recipients. "Direct mail" includes tangible personal  
30 property supplied directly or indirectly by the purchaser to the direct  
31 mail seller for inclusion in the package containing the printed  
32 material. "Direct mail" does not include multiple items of printed  
33 material delivered to a single address;

34 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax  
35 year," "taxable year," "person," "company," "sale," "sale at  
36 wholesale," "wholesale," "business," "engaging in business," "cash  
37 discount," "successor," "consumer," "in this state," ((and)) "within

1 this state," marijuana, useable marijuana, and marijuana-infused  
2 products applies equally to the provisions of this chapter;

3 (7) For the purposes of the taxes imposed under this chapter and  
4 under chapter 82.12 RCW, "tangible personal property" means personal  
5 property that can be seen, weighed, measured, felt, or touched, or that  
6 is in any other manner perceptible to the senses. Tangible personal  
7 property includes electricity, water, gas, steam, and prewritten  
8 computer software;

9 (8) "Extended warranty" has the same meaning as in RCW  
10 82.04.050(7);

11 (9) The definitions in RCW 82.04.192 apply to this chapter;

12 (10) For the purposes of the taxes imposed under this chapter and  
13 chapter 82.12 RCW, whenever the terms "property" or "personal property"  
14 are used, those terms must be construed to include digital goods and  
15 digital codes unless:

16 (a) It is clear from the context that the term "personal property"  
17 is intended only to refer to tangible personal property;

18 (b) It is clear from the context that the term "property" is  
19 intended only to refer to tangible personal property, real property, or  
20 both; or

21 (c) To construe the term "property" or "personal property" as  
22 including digital goods and digital codes would yield unlikely, absurd,  
23 or strained consequences; and

24 (11) "Retail sale" or "sale at retail" means any sale, lease, or  
25 rental for any purpose other than for resale, sublease, or subrent.

26 (12) The terms "agriculture," "farming," "horticulture,"  
27 "horticultural," and "horticultural product" may not be construed to  
28 include or relate to marijuana, useable marijuana, or marijuana-infused  
29 products unless the applicable term is explicitly defined to include  
30 marijuana, useable marijuana, or marijuana-infused products.

31 **Sec. 12.** RCW 82.08.020 and 2011 c 171 s 120 are each amended to  
32 read as follows:

33 (1) There is levied and collected a tax equal to six and five-  
34 tenths percent of the selling price on each retail sale in this state  
35 of:

36 (a) Tangible personal property, unless the sale is specifically  
37 excluded from the RCW 82.04.050 definition of retail sale;

1 (b) Digital goods, digital codes, and digital automated services,  
2 if the sale is included within the RCW 82.04.050 definition of retail  
3 sale;

4 (c) Services, other than digital automated services, included  
5 within the RCW 82.04.050 definition of retail sale;

6 (d) Extended warranties to consumers; and

7 (e) Anything else, the sale of which is included within the RCW  
8 82.04.050 definition of retail sale.

9 (2) There is levied and collected an additional tax on each retail  
10 car rental, regardless of whether the vehicle is licensed in this  
11 state, equal to five and nine-tenths percent of the selling price. The  
12 revenue collected under this subsection must be deposited in the  
13 multimodal transportation account created in RCW 47.66.070.

14 (3) Beginning July 1, 2003, there is levied and collected an  
15 additional tax of three-tenths of one percent of the selling price on  
16 each retail sale of a motor vehicle in this state, other than retail  
17 car rentals taxed under subsection (2) of this section. The revenue  
18 collected under this subsection must be deposited in the multimodal  
19 transportation account created in RCW 47.66.070.

20 (4) For purposes of subsection (3) of this section, "motor vehicle"  
21 has the meaning provided in RCW 46.04.320, but does not include:

22 (a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and  
23 46.04.181, unless the farm tractor or farm vehicle is for use in the  
24 production of marijuana;

25 (b) Off-road vehicles as defined in RCW 46.04.365((7));

26 (c) Nonhighway vehicles as defined in RCW 46.09.310((7)); and

27 (d) Snowmobiles as defined in RCW 46.04.546.

28 (5) Beginning on December 8, 2005, 0.16 percent of the taxes  
29 collected under subsection (1) of this section must be dedicated to  
30 funding comprehensive performance audits required under RCW 43.09.470.  
31 The revenue identified in this subsection must be deposited in the  
32 performance audits of government account created in RCW 43.09.475.

33 (6) The taxes imposed under this chapter apply to successive retail  
34 sales of the same property.

35 (7) The rates provided in this section apply to taxes imposed under  
36 chapter 82.12 RCW as provided in RCW 82.12.020.

1       **Sec. 13.** RCW 82.08.02565 and 2011 c 23 s 2 are each amended to  
2 read as follows:

3       (1)(a) The tax levied by RCW 82.08.020 does not apply to sales to  
4 a manufacturer or processor for hire of machinery and equipment used  
5 directly in a manufacturing operation or research and development  
6 operation, to sales to a person engaged in testing for a manufacturer  
7 or processor for hire of machinery and equipment used directly in a  
8 testing operation, or to sales of or charges made for labor and  
9 services rendered in respect to installing, repairing, cleaning,  
10 altering, or improving the machinery and equipment.

11       (b) Sellers making tax-exempt sales under this section must obtain  
12 from the purchaser an exemption certificate in a form and manner  
13 prescribed by the department by rule. The seller must retain a copy of  
14 the certificate for the seller's files.

15       (2) For purposes of this section and RCW 82.12.02565:

16       (a) "Machinery and equipment" means industrial fixtures, devices,  
17 and support facilities, and tangible personal property that becomes an  
18 ingredient or component thereof, including repair parts and replacement  
19 parts. "Machinery and equipment" includes pollution control equipment  
20 installed and used in a manufacturing operation, testing operation, or  
21 research and development operation to prevent air pollution, water  
22 pollution, or contamination that might otherwise result from the  
23 manufacturing operation, testing operation, or research and development  
24 operation. "Machinery and equipment" also includes digital goods.

25       (b) "Machinery and equipment" does not include:

26       (i) Hand-powered tools;

27       (ii) Property with a useful life of less than one year;

28       (iii) Buildings, other than machinery and equipment that is  
29 permanently affixed to or becomes a physical part of a building; and

30       (iv) Building fixtures that are not integral to the manufacturing  
31 operation, testing operation, or research and development operation  
32 that are permanently affixed to and become a physical part of a  
33 building, such as utility systems for heating, ventilation, air  
34 conditioning, communications, plumbing, or electrical.

35       (c) Machinery and equipment is "used directly" in a manufacturing  
36 operation, testing operation, or research and development operation if  
37 the machinery and equipment:

1 (i) Acts upon or interacts with an item of tangible personal  
2 property;

3 (ii) Conveys, transports, handles, or temporarily stores an item of  
4 tangible personal property at the manufacturing site or testing site;

5 (iii) Controls, guides, measures, verifies, aligns, regulates, or  
6 tests tangible personal property at the site or away from the site;

7 (iv) Provides physical support for or access to tangible personal  
8 property;

9 (v) Produces power for, or lubricates machinery and equipment;

10 (vi) Produces another item of tangible personal property for use in  
11 the manufacturing operation, testing operation, or research and  
12 development operation;

13 (vii) Places tangible personal property in the container, package,  
14 or wrapping in which the tangible personal property is normally sold or  
15 transported; or

16 (viii) Is integral to research and development as defined in RCW  
17 82.63.010.

18 (d) "Manufacturer" means a person that qualifies as a manufacturer  
19 under RCW 82.04.110. "Manufacturer" also includes a person that prints  
20 newspapers or other materials.

21 (e) "Manufacturing" means only those activities that come within  
22 the definition of "to manufacture" in RCW 82.04.120 and are taxed as  
23 manufacturing or processing for hire under chapter 82.04 RCW, or would  
24 be taxed as such if such activity were conducted in this state or if  
25 not for an exemption or deduction. "Manufacturing" also includes  
26 printing newspapers or other materials. An activity is not taxed as  
27 manufacturing or processing for hire under chapter 82.04 RCW if the  
28 activity is within the purview of chapter 82.16 RCW.

29 (f) "Manufacturing operation" means the manufacturing of articles,  
30 substances, or commodities for sale as tangible personal property. A  
31 manufacturing operation begins at the point where the raw materials  
32 enter the manufacturing site and ends at the point where the processed  
33 material leaves the manufacturing site. With respect to the production  
34 of class A or exceptional quality biosolids by a wastewater treatment  
35 facility, the manufacturing operation begins at the point where class  
36 B biosolids undergo additional processing to achieve class A or  
37 exceptional quality standards. Notwithstanding anything to the  
38 contrary in this section, the term also includes that portion of a

1 cogeneration project that is used to generate power for consumption  
2 within the manufacturing site of which the cogeneration project is an  
3 integral part. The term does not include the preparation of food  
4 products on the premises of a person selling food products at retail.

5 (g) "Cogeneration" means the simultaneous generation of electrical  
6 energy and low-grade heat from the same fuel.

7 (h) "Research and development operation" means engaging in research  
8 and development as defined in RCW 82.63.010 by a manufacturer or  
9 processor for hire.

10 (i) "Testing" means activities performed to establish or determine  
11 the properties, qualities, and limitations of tangible personal  
12 property.

13 (j) "Testing operation" means the testing of tangible personal  
14 property for a manufacturer or processor for hire. A testing operation  
15 begins at the point where the tangible personal property enters the  
16 testing site and ends at the point where the tangible personal property  
17 leaves the testing site. The term also includes the testing of  
18 tangible personal property for use in that portion of a cogeneration  
19 project that is used to generate power for consumption within the  
20 manufacturing site of which the cogeneration project is an integral  
21 part. The term does not include the testing of tangible personal  
22 property for use in the production of electricity by a light and power  
23 business as defined in RCW 82.16.010 or the preparation of food  
24 products on the premises of a person selling food products at retail.

25 (3) This section does not apply (a) to sales of machinery and  
26 equipment used directly in the manufacturing, research and development,  
27 or testing of marijuana, useable marijuana, or marijuana-infused  
28 products, or (b) to sales of or charges made for labor and services  
29 rendered in respect to installing, repairing, cleaning, altering, or  
30 improving such machinery and equipment.

31 **Sec. 14.** RCW 82.12.02565 and 2003 c 5 s 5 are each amended to read  
32 as follows:

33 (1) The provisions of this chapter (~~(shall)~~) do not apply in  
34 respect to the use by a manufacturer or processor for hire of machinery  
35 and equipment used directly in a manufacturing operation or research  
36 and development operation, to the use by a person engaged in testing  
37 for a manufacturer or processor for hire of machinery and equipment

1 used directly in a testing operation, or to the use of labor and  
2 services rendered in respect to installing, repairing, cleaning,  
3 altering, or improving the machinery and equipment.

4 (2) This section does not apply to the use of (a) machinery and  
5 equipment used directly in the manufacturing, research and development,  
6 or testing of marijuana, useable marijuana, or marijuana-infused  
7 products, or (b) labor and services rendered in respect to installing,  
8 repairing, cleaning, altering, or improving such machinery and  
9 equipment.

10 **Sec. 15.** RCW 82.08.0257 and 2009 c 535 s 511 are each amended to  
11 read as follows:

12 The tax levied by RCW 82.08.020 does not apply to auction sales  
13 made by or through auctioneers of personal property (including  
14 household goods) that has been used in conducting a farm activity, when  
15 the seller thereof is a farmer as defined in RCW 82.04.213 and the sale  
16 is held or conducted upon a farm and not otherwise. The exemption in  
17 this section does not apply to personal property used by the seller in  
18 the production of marijuana, useable marijuana, or marijuana-infused  
19 products.

20 **Sec. 16.** RCW 82.12.0258 and 2009 c 535 s 612 are each amended to  
21 read as follows:

22 The provisions of this chapter do not apply in respect to the use  
23 of personal property (including household goods) that has been used in  
24 conducting a farm activity, if such property was purchased from a  
25 farmer as defined in RCW 82.04.213 at an auction sale held or conducted  
26 by an auctioneer upon a farm and not otherwise. The exemption in this  
27 section does not apply to personal property used by the seller in the  
28 production of marijuana, useable marijuana, or marijuana-infused  
29 products.

30 **Sec. 17.** RCW 82.08.0273 and 2011 c 7 s 1 are each amended to read  
31 as follows:

32 (1) The tax levied by RCW 82.08.020 does not apply to sales to  
33 nonresidents of this state of tangible personal property, digital  
34 goods, and digital codes, when:

35 (a) The property is for use outside this state;



1 (b) The purchaser is a bona fide resident of a province or  
2 territory of Canada or a state, territory, or possession of the United  
3 States, other than the state of Washington; and

4 (i) Such state, possession, territory, or province does not impose,  
5 or have imposed on its behalf, a generally applicable retail sales tax,  
6 use tax, value added tax, gross receipts tax on retailing activities,  
7 or similar generally applicable tax, of three percent or more; or

8 (ii) If imposing a tax described in (b)(i) of this subsection,  
9 provides an exemption for sales to Washington residents by reason of  
10 their residence; and

11 (c) The purchaser agrees, when requested, to grant the department  
12 of revenue access to such records and other forms of verification at  
13 his or her place of residence to assure that such purchases are not  
14 first used substantially in the state of Washington.

15 (2) Notwithstanding anything to the contrary in this chapter, if  
16 parts or other tangible personal property are installed by the seller  
17 during the course of repairing, cleaning, altering, or improving motor  
18 vehicles, trailers, or campers and the seller makes a separate charge  
19 for the tangible personal property, the tax levied by RCW 82.08.020  
20 does not apply to the separately stated charge to a nonresident  
21 purchaser for the tangible personal property but only if the separately  
22 stated charge does not exceed either the seller's current publicly  
23 stated retail price for the tangible personal property or, if no  
24 publicly stated retail price is available, the seller's cost for the  
25 tangible personal property. However, the exemption provided by this  
26 section does not apply if tangible personal property is installed by  
27 the seller during the course of repairing, cleaning, altering, or  
28 improving motor vehicles, trailers, or campers and the seller makes a  
29 single nonitemized charge for providing the tangible personal property  
30 and service. All of the requirements in subsections (1) and (3)  
31 through (6) of this section apply to this subsection.

32 (3)(a) Any person claiming exemption from retail sales tax under  
33 the provisions of this section must display proof of his or her current  
34 nonresident status as provided in this section.

35 (b) Acceptable proof of a nonresident person's status includes one  
36 piece of identification such as a valid driver's license from the  
37 jurisdiction in which the out-of-state residency is claimed or a valid  
38 identification card which has a photograph of the holder and is issued

1 by the out-of-state jurisdiction. Identification under this subsection  
2 (3)(b) must show the holder's residential address and have as one of  
3 its legal purposes the establishment of residency in that out-of-state  
4 jurisdiction.

5 (c) In lieu of furnishing proof of a person's nonresident status  
6 under (b) of this subsection (3), a person claiming exemption from  
7 retail sales tax under the provisions of this section may provide the  
8 seller with an exemption certificate in compliance with subsection  
9 (4)(b) of this section.

10 (4)(a) Nothing in this section requires the vendor to make tax  
11 exempt retail sales to nonresidents. A vendor may choose to make sales  
12 to nonresidents, collect the sales tax, and remit the amount of sales  
13 tax collected to the state as otherwise provided by law. If the vendor  
14 chooses to make a sale to a nonresident without collecting the sales  
15 tax, the vendor must examine the purchaser's proof of nonresidence,  
16 determine whether the proof is acceptable under subsection (3)(b) of  
17 this section, and maintain records for each nontaxable sale which  
18 (~~(shall)~~) must show the type of proof accepted, including any  
19 identification numbers where appropriate, and the expiration date, if  
20 any.

21 (b) In lieu of using the method provided in (a) of this subsection  
22 to document an exempt sale to a nonresident, a seller may accept from  
23 the purchaser a properly completed uniform exemption certificate  
24 approved by the streamlined sales and use tax agreement governing board  
25 or any other exemption certificate as may be authorized by the  
26 department and properly completed by the purchaser. A nonresident  
27 purchaser who uses an exemption certificate authorized in this  
28 subsection (4)(b) must include the purchaser's driver's license number  
29 or other state-issued identification number and the state of issuance.

30 (c) In lieu of using the methods provided in (a) and (b) of this  
31 subsection to document an exempt sale to a nonresident, a seller may  
32 capture the relevant data elements as allowed under the streamlined  
33 sales and use tax agreement.

34 (5)(a) Any person making fraudulent statements, which includes the  
35 offer of fraudulent identification or fraudulently procured  
36 identification to a vendor, in order to purchase goods without paying  
37 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

1 (b) Any person making tax exempt purchases under this section by  
2 displaying proof of identification not his or her own, or counterfeit  
3 identification, with intent to violate the provisions of this section,  
4 is guilty of a misdemeanor and, in addition, is liable for the tax and  
5 subject to a penalty equal to the greater of one hundred dollars or the  
6 tax due on such purchases.

7 (6)(a) Any vendor who makes sales without collecting the tax and  
8 who fails to maintain records of sales to nonresidents as provided in  
9 this section is personally liable for the amount of tax due.

10 (b) Any vendor who makes sales without collecting the retail sales  
11 tax under this section and who has actual knowledge that the  
12 purchaser's proof of identification establishing out-of-state residency  
13 is fraudulent is guilty of a misdemeanor and, in addition, is liable  
14 for the tax and subject to a penalty equal to the greater of one  
15 thousand dollars or the tax due on such sales. In addition, both the  
16 purchaser and the vendor are liable for any penalties and interest  
17 assessable under chapter 82.32 RCW.

18 (7) The exemption in this section does not apply to sales of  
19 marijuana, useable marijuana, or marijuana-infused products.

20 **Sec. 18.** RCW 82.08.02745 and 2007 c 54 s 14 are each amended to  
21 read as follows:

22 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
23 charges made for labor and services rendered by any person in respect  
24 to the constructing, repairing, decorating, or improving of new or  
25 existing buildings or other structures used as agricultural employee  
26 housing, or to sales of tangible personal property that becomes an  
27 ingredient or component of the buildings or other structures during the  
28 course of the constructing, repairing, decorating, or improving the  
29 buildings or other structures. The exemption is available only if the  
30 buyer provides the seller with an exemption certificate in a form and  
31 manner prescribed by the department by rule.

32 (2) The exemption provided in this section for agricultural  
33 employee housing provided to year-round employees of the agricultural  
34 employer, only applies if that housing is built to the current building  
35 code for single-family or multifamily dwellings according to the state  
36 building code, chapter 19.27 RCW.

1 (3) Any agricultural employee housing built under this section  
2 (~~((shall))~~) must be used according to this section for at least five  
3 consecutive years from the date the housing is approved for occupancy,  
4 or the full amount of tax otherwise due (~~((shall-be))~~) is immediately due  
5 and payable together with interest, but not penalties, from the date  
6 the housing is approved for occupancy until the date of payment. If at  
7 any time agricultural employee housing that is not located on  
8 agricultural land ceases to be used in the manner specified in  
9 subsection (2) of this section, the full amount of tax otherwise due  
10 (~~((shall-be))~~) is immediately due and payable with interest, but not  
11 penalties, from the date the housing ceases to be used as agricultural  
12 employee housing until the date of payment.

13 (4) The exemption provided in this section (~~((shall))~~) does not apply  
14 to housing built for the occupancy of an employer, family members of an  
15 employer, or persons owning stock or shares in a farm partnership or  
16 corporation business.

17 (5) For purposes of this section and RCW 82.12.02685(~~((÷))~~), the  
18 following definitions apply unless the context clearly requires  
19 otherwise.

20 (a) "Agricultural employee" or "employee" has the same meaning as  
21 given in RCW 19.30.010;

22 (b) "Agricultural employer" or "employer" has the same meaning as  
23 given in RCW 19.30.010; and

24 (c) "Agricultural employee housing" means all facilities provided  
25 by an agricultural employer, housing authority, local government, state  
26 or federal agency, nonprofit community or neighborhood-based  
27 organization that is exempt from income tax under section 501(c) of the  
28 internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit  
29 provider of housing for housing agricultural employees on a year-round  
30 or seasonal basis, including bathing, food handling, hand washing,  
31 laundry, and toilet facilities, single-family and multifamily dwelling  
32 units and dormitories, and includes labor camps under RCW 70.114A.110.  
33 "Agricultural employee housing" does not include:

34 (i) Housing regularly provided on a commercial basis to the general  
35 public(~~((. "Agricultural employee housing" does not include))~~);

36 (ii) Housing provided by a housing authority unless at least eighty  
37 percent of the occupants are agricultural employees whose adjusted

1 income is less than fifty percent of median family income, adjusted for  
2 household size, for the county where the housing is provided; and  
3 (iii) Housing provided to agricultural employees providing services  
4 related to the growing, raising, or producing of marijuana.

5 **Sec. 19.** RCW 82.08.0281 and 2004 c 153 s 108 are each amended to  
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
8 sales of drugs for human use dispensed or to be dispensed to patients,  
9 pursuant to a prescription.

10 (2) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
11 sales of drugs or devices used for family planning purposes, including  
12 the prevention of conception, for human use dispensed or to be  
13 dispensed to patients, pursuant to a prescription.

14 (3) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to  
15 sales of drugs and devices used for family planning purposes, including  
16 the prevention of conception, for human use supplied by a family  
17 planning clinic that is under contract with the department of health to  
18 provide family planning services.

19 (4) The following definitions in this subsection apply throughout  
20 this section unless the context clearly requires otherwise.

21 (a) "Prescription" means an order, formula, or recipe issued in any  
22 form of oral, written, electronic, or other means of transmission by a  
23 duly licensed practitioner authorized by the laws of this state to  
24 prescribe.

25 (b) "Drug" means a compound, substance, or preparation, and any  
26 component of a compound, substance, or preparation, other than food and  
27 food ingredients, dietary supplements, or alcoholic beverages,  
28 marijuana, useable marijuana, or marijuana-infused products:

29 (i) Recognized in the official United States pharmacopoeia,  
30 official homeopathic pharmacopoeia of the United States, or official  
31 national formulary, or any supplement to any of them; or

32 (ii) Intended for use in the diagnosis, cure, mitigation,  
33 treatment, or prevention of disease; or

34 (iii) Intended to affect the structure or any function of the body.

35 (c) "Over-the-counter drug" means a drug that contains a label that  
36 identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as  
37 amended or renumbered on January 1, 2003. The label includes:

- 1 (i) A "drug facts" panel; or  
2 (ii) A statement of the "active ingredient(s)" with a list of those  
3 ingredients contained in the compound, substance, or preparation.

4 **Sec. 20.** RCW 82.08.0288 and 1983 1st ex.s. c 55 s 5 are each  
5 amended to read as follows:

6 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to the  
7 lease of irrigation equipment if:

8 (1) The irrigation equipment was purchased by the lessor for the  
9 purpose of irrigating land controlled by the lessor;

10 (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in  
11 respect to the irrigation equipment;

12 (3) The irrigation equipment is attached to the land in whole or in  
13 part; (~~and~~)

14 (4) The irrigation equipment is not used in the production of  
15 marijuana; and

16 (5) The irrigation equipment is leased to the lessee as an  
17 incidental part of the lease of the underlying land to the lessee and  
18 is used solely on such land.

19 **Sec. 21.** RCW 82.12.0283 and 1983 1st ex.s. c 55 s 6 are each  
20 amended to read as follows:

21 The provisions of this chapter (~~shall~~) do not apply to the use of  
22 irrigation equipment if:

23 (1) The irrigation equipment was purchased by the lessor for the  
24 purpose of irrigating land controlled by the lessor;

25 (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in  
26 respect to the irrigation equipment;

27 (3) The irrigation equipment is attached to the land in whole or in  
28 part; (~~and~~)

29 (4) The irrigation equipment is not used in the production of  
30 marijuana; and

31 (5) The irrigation equipment is leased to the lessee as an  
32 incidental part of the lease of the underlying land to the lessee and  
33 is used solely on such land.

34 **Sec. 22.** RCW 82.08.0293 and 2011 c 2 s 301 are each amended to  
35 read as follows:

1 (1) The tax levied by RCW 82.08.020 does not apply to sales of food  
2 and food ingredients. "Food and food ingredients" means substances,  
3 whether in liquid, concentrated, solid, frozen, dried, or dehydrated  
4 form, that are sold for ingestion or chewing by humans and are consumed  
5 for their taste or nutritional value. "Food and food ingredients" does  
6 not include:

7 (a) "Alcoholic beverages," which means beverages that are suitable  
8 for human consumption and contain one-half of one percent or more of  
9 alcohol by volume; (~~and~~)

10 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
11 tobacco, or any other item that contains tobacco; and

12 (c) Marijuana, useable marijuana, or marijuana-infused products.

13 (2) The exemption of "food and food ingredients" provided for in  
14 subsection (1) of this section does not apply to prepared food, soft  
15 drinks, or dietary supplements. For purposes of this subsection, the  
16 following definitions apply:

17 (a) "Dietary supplement" means any product, other than tobacco,  
18 intended to supplement the diet that:

19 (i) Contains one or more of the following dietary ingredients:

20 (A) A vitamin;

21 (B) A mineral;

22 (C) An herb or other botanical;

23 (D) An amino acid;

24 (E) A dietary substance for use by humans to supplement the diet by  
25 increasing the total dietary intake; or

26 (F) A concentrate, metabolite, constituent, extract, or combination  
27 of any ingredient described in this subsection;

28 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,  
29 gelcap, or liquid form, or if not intended for ingestion in such form,  
30 is not represented as conventional food and is not represented for use  
31 as a sole item of a meal or of the diet; and

32 (iii) Is required to be labeled as a dietary supplement,  
33 identifiable by the "supplement facts" box found on the label as  
34 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as  
35 of January 1, 2003.

36 (b)(i) "Prepared food" means:

37 (A) Food sold in a heated state or heated by the seller;

1 (B) Food sold with eating utensils provided by the seller,  
2 including plates, knives, forks, spoons, glasses, cups, napkins, or  
3 straws. A plate does not include a container or packaging used to  
4 transport the food; or

5 (C) Two or more food ingredients mixed or combined by the seller  
6 for sale as a single item, except:

7 (I) Food that is only cut, repackaged, or pasteurized by the  
8 seller; or

9 (II) Raw eggs, fish, meat, poultry, and foods containing these raw  
10 animal foods requiring cooking by the consumer as recommended by the  
11 federal food and drug administration in chapter 3, part 401.11 of The  
12 Food Code, published by the food and drug administration, as amended or  
13 renumbered as of January 1, 2003, so as to prevent foodborne illness.

14 (ii) "Prepared food" does not include the following food or food  
15 ingredients, if the food or food ingredients are sold without eating  
16 utensils provided by the seller:

17 (A) Food sold by a seller whose proper primary North American  
18 industry classification system (NAICS) classification is manufacturing  
19 in sector 311, except subsector 3118 (bakeries), as provided in the  
20 "North American industry classification system--United States, 2002";

21 (B) Food sold in an unheated state by weight or volume as a single  
22 item; or

23 (C) Bakery items. The term "bakery items" includes bread, rolls,  
24 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,  
25 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

26 (c) "Soft drinks" means nonalcoholic beverages that contain natural  
27 or artificial sweeteners. Soft drinks do not include beverages that  
28 contain: Milk or milk products; soy, rice, or similar milk  
29 substitutes; or greater than fifty percent of vegetable or fruit juice  
30 by volume.

31 (3) Notwithstanding anything in this section to the contrary, the  
32 exemption of "food and food ingredients" provided in this section  
33 applies to food and food ingredients that are furnished, prepared, or  
34 served as meals:

35 (a) Under a state administered nutrition program for the aged as  
36 provided for in the older Americans act (P.L. 95-478 Title III) and RCW  
37 74.38.040(6);



1 (b) That are provided to senior citizens, individuals with  
2 disabilities, or low-income persons by a not-for-profit organization  
3 organized under chapter 24.03 or 24.12 RCW; or

4 (c) That are provided to residents, sixty-two years of age or  
5 older, of a qualified low-income senior housing facility by the lessor  
6 or operator of the facility. The sale of a meal that is billed to both  
7 spouses of a marital community or both domestic partners of a domestic  
8 partnership meets the age requirement in this subsection (3)(c) if at  
9 least one of the spouses or domestic partners is at least sixty-two  
10 years of age. For purposes of this subsection, "qualified low-income  
11 senior housing facility" means a facility:

12 (i) That meets the definition of a qualified low-income housing  
13 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,  
14 as existing on August 1, 2009;

15 (ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

16 (iii) For which the lessor or operator has at any time been  
17 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42  
18 of the federal internal revenue code.

19 (4)(a) Subsection (1) of this section notwithstanding, the retail  
20 sale of food and food ingredients is subject to sales tax under RCW  
21 82.08.020 if the food and food ingredients are sold through a vending  
22 machine. Except as provided in (b) of this subsection, the selling  
23 price of food and food ingredients sold through a vending machine for  
24 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

25 (b) For soft drinks and hot prepared food and food ingredients,  
26 other than food and food ingredients which are heated after they have  
27 been dispensed from the vending machine, the selling price is the total  
28 gross receipts of such sales divided by the sum of one plus the sales  
29 tax rate expressed as a decimal.

30 (c) For tax collected under this subsection (4), the requirements  
31 that the tax be collected from the buyer and that the amount of tax be  
32 stated as a separate item are waived.

33 **Sec. 23.** RCW 82.08.820 and 2011 c 174 s 206 are each amended to  
34 read as follows:

35 (1) Wholesalers or third-party warehousers who own or operate  
36 warehouses or grain elevators and retailers who own or operate

distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product (.~~"Finished goods" does not include~~);

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Marijuana, useable marijuana, or marijuana-infused products;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods.

1 The term includes tangible personal property with a useful life of one  
2 year or more that becomes an ingredient or component of the equipment,  
3 including repair and replacement parts. The term does not include  
4 equipment in offices, lunchrooms, restrooms, and other like space,  
5 within a warehouse or grain elevator, or equipment used for  
6 nonwarehousing purposes. "Material-handling equipment" includes but is  
7 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-  
8 place units, cranes, hoists, mechanical arms, and robots; mechanized  
9 systems, including containers that are an integral part of the system,  
10 whose purpose is to lift or move tangible personal property; and  
11 automated handling, storage, and retrieval systems, including computers  
12 that control them, whose purpose is to lift or move tangible personal  
13 property; and forklifts and other off-the-road vehicles that are used  
14 to lift or move tangible personal property and that cannot be operated  
15 legally on roads and streets. "Racking equipment" includes, but is not  
16 limited to, conveying systems, chutes, shelves, racks, bins, drawers,  
17 pallets, and other containers and storage devices that form a necessary  
18 part of the storage system;

19 (h) "Person" has the meaning given in RCW 82.04.030;

20 (i) "Retailer" means a person who makes "sales at retail" as  
21 defined in chapter 82.04 RCW of tangible personal property;

22 (j) "Square footage" means the product of the two horizontal  
23 dimensions of each floor of a specific warehouse. The entire footprint  
24 of the warehouse (~~(shall)~~) must be measured in calculating the square  
25 footage, including space that juts out from the building profile such  
26 as loading docks. "Square footage" does not mean the aggregate of the  
27 square footage of more than one warehouse at a location or the  
28 aggregate of the square footage of warehouses at more than one  
29 location;

30 (k) "Third-party warehouser" means a person taxable under RCW  
31 82.04.280(1)(d);

32 (l) "Warehouse" means an enclosed building or structure in which  
33 finished goods are stored. A warehouse building or structure may have  
34 more than one storage room and more than one floor. Office space,  
35 lunchrooms, restrooms, and other space within the warehouse and  
36 necessary for the operation of the warehouse are considered part of the  
37 warehouse as are loading docks and other such space attached to the  
38 building and used for handling of finished goods. Landscaping and

1 parking lots are not considered part of the warehouse. A storage yard  
2 is not a warehouse, nor is a building in which manufacturing takes  
3 place; and

4 (m) "Wholesaler" means a person who makes "sales at wholesale" as  
5 defined in chapter 82.04 RCW of tangible personal property, but  
6 "wholesaler" does not include a person who makes sales exempt under RCW  
7 82.04.330.

8 (3)(a) A person claiming an exemption from state tax in the form of  
9 a remittance under this section must pay the tax imposed by RCW  
10 82.08.020. The buyer may then apply to the department for remittance  
11 of all or part of the tax paid under RCW 82.08.020. For grain  
12 elevators with bushel capacity of one million but less than two  
13 million, the remittance is equal to fifty percent of the amount of tax  
14 paid. For warehouses with square footage of two hundred thousand or  
15 more and for grain elevators with bushel capacity of two million or  
16 more, the remittance is equal to one hundred percent of the amount of  
17 tax paid for qualifying construction, materials, service, and labor,  
18 and fifty percent of the amount of tax paid for qualifying material-  
19 handling equipment and racking equipment, and labor and services  
20 rendered in respect to installing, repairing, cleaning, altering, or  
21 improving the equipment.

22 (b) The department (~~((shall))~~) must determine eligibility under this  
23 section based on information provided by the buyer and through audit  
24 and other administrative records. The buyer (~~((shall))~~) must on a  
25 quarterly basis submit an information sheet, in a form and manner as  
26 required by the department by rule, specifying the amount of exempted  
27 tax claimed and the qualifying purchases or acquisitions for which the  
28 exemption is claimed. The buyer (~~((shall))~~) must retain, in adequate  
29 detail to enable the department to determine whether the equipment or  
30 construction meets the criteria under this section: Invoices; proof of  
31 tax paid; documents describing the material-handling equipment and  
32 racking equipment; location and size of warehouses and grain elevators;  
33 and construction invoices and documents.

34 (c) The department (~~((shall))~~) must on a quarterly basis remit  
35 exempted amounts to qualifying persons who submitted applications  
36 during the previous quarter.

37 (4) Warehouses, grain elevators, and material-handling equipment  
38 and racking equipment for which an exemption, credit, or deferral has

1 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or  
2 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance  
3 under this section. Warehouses and grain elevators upon which  
4 construction was initiated before May 20, 1997, are not eligible for a  
5 remittance under this section.

6 (5) The lessor or owner of a warehouse or grain elevator is not  
7 eligible for a remittance under this section unless the underlying  
8 ownership of the warehouse or grain elevator and the material-handling  
9 equipment and racking equipment vests exclusively in the same person,  
10 or unless the lessor by written contract agrees to pass the economic  
11 benefit of the remittance to the lessee in the form of reduced rent  
12 payments.

13 **Sec. 24.** RCW 82.14.430 and 2011 c 171 s 123 are each amended to  
14 read as follows:

15 (1) If approved by the majority of the voters within its boundaries  
16 voting on the ballot proposition, a regional transportation investment  
17 district may impose a sales and use tax of up to 0.1 percent of the  
18 selling price or value of the article used in the case of a use tax.  
19 The tax authorized by this section is in addition to the tax authorized  
20 by RCW 82.14.030 and must be collected from those persons who are  
21 taxable by the state under chapters 82.08 and 82.12 RCW upon the  
22 occurrence of any taxable event within the taxing district. Motor  
23 vehicles are exempt from the sales and use tax imposed under this  
24 subsection.

25 (2) If approved by the majority of the voters within its boundaries  
26 voting on the ballot proposition, a regional transportation investment  
27 district may impose a tax on the use of a motor vehicle within a  
28 regional transportation investment district. The tax applies to those  
29 persons who reside within the regional transportation investment  
30 district. The rate of the tax may not exceed 0.1 percent of the value  
31 of the motor vehicle. The tax authorized by this subsection is in  
32 addition to the tax authorized under RCW 82.14.030 and must be imposed  
33 and collected at the time a taxable event under RCW 82.08.020(1) or  
34 82.12.020 takes place. All revenue received under this subsection must  
35 be deposited in the local sales and use tax account and distributed to  
36 the regional transportation investment district according to RCW

82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller (~~shall~~) must collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(i) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of marijuana;

(ii) Off-road vehicles as defined in RCW 46.04.365((~~7~~));

(iii) Nonhighway vehicles as defined in RCW 46.09.310((~~7~~)); and

(iv) Snowmobiles as defined in RCW 46.04.546.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district (~~shall~~) must provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected.

**Sec. 25.** RCW 82.16.050 and 2007 c 330 s 1 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof. This subsection may not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

1 (2) Amounts derived from the sale of commodities to persons in the  
2 same public service business as the seller, for resale as such within  
3 this state. This deduction is allowed only with respect to water  
4 distribution, gas distribution or other public service businesses which  
5 furnish water, gas or any other commodity in the performance of public  
6 service businesses;

7 (3) Amounts actually paid by a taxpayer to another person taxable  
8 under this chapter as the latter's portion of the consideration due for  
9 services furnished jointly by both, if the total amount has been  
10 credited to and appears in the gross income reported for tax by the  
11 former;

12 (4) The amount of cash discount actually taken by the purchaser or  
13 customer;

14 (5) The amount of bad debts, as that term is used in 26 U.S.C. Sec.  
15 166, as amended or renumbered as of January 1, 2003, on which tax was  
16 previously paid under this chapter;

17 (6) Amounts derived from business which the state is prohibited  
18 from taxing under the Constitution of this state or the Constitution or  
19 laws of the United States;

20 (7) Amounts derived from the distribution of water through an  
21 irrigation system, for irrigation purposes other than the irrigation of  
22 marijuana as defined under RCW 69.50.101;

23 (8) Amounts derived from the transportation of commodities from  
24 points of origin in this state to final destination outside this state,  
25 or from points of origin outside this state to final destination in  
26 this state, with respect to which the carrier grants to the shipper the  
27 privilege of stopping the shipment in transit at some point in this  
28 state for the purpose of storing, manufacturing, milling, or other  
29 processing, and thereafter forwards the same commodity, or its  
30 equivalent, in the same or converted form, under a through freight rate  
31 from point of origin to final destination;

32 (9) Amounts derived from the transportation of commodities from  
33 points of origin in the state to an export elevator, wharf, dock or  
34 ship side on tidewater or its navigable tributaries to be forwarded,  
35 without intervening transportation, by vessel, in their original form,  
36 to interstate or foreign destinations. No deduction is allowed under  
37 this subsection when the point of origin and the point of delivery to

1 the export elevator, wharf, dock, or ship side are located within the  
2 corporate limits of the same city or town;

3 (10) Amounts derived from the transportation of agricultural  
4 commodities, not including manufactured substances or articles, from  
5 points of origin in the state to interim storage facilities in this  
6 state for transshipment, without intervening transportation, to an  
7 export elevator, wharf, dock, or ship side on tidewater or its  
8 navigable tributaries to be forwarded, without intervening  
9 transportation, by vessel, in their original form, to interstate or  
10 foreign destinations. If agricultural commodities are transshipped  
11 from interim storage facilities in this state to storage facilities at  
12 a port on tidewater or its navigable tributaries, the same agricultural  
13 commodity dealer must operate both the interim storage facilities and  
14 the storage facilities at the port.

15 (a) The deduction under this subsection is available only when the  
16 person claiming the deduction obtains a certificate from the  
17 agricultural commodity dealer operating the interim storage facilities,  
18 in a form and manner prescribed by the department, certifying that:

19 (i) More than ninety-six percent of all of the type of agricultural  
20 commodity delivered by the person claiming the deduction under this  
21 subsection and delivered by all other persons to the dealer's interim  
22 storage facilities during the preceding calendar year was shipped by  
23 vessel in original form to interstate or foreign destinations; and

24 (ii) Any of the agricultural commodity that is transshipped to  
25 ports on tidewater or its navigable tributaries will be received at  
26 storage facilities operated by the same agricultural commodity dealer  
27 and will be shipped from such facilities, without intervening  
28 transportation, by vessel, in their original form, to interstate or  
29 foreign destinations.

30 (b) As used in this subsection, "agricultural commodity" has the  
31 same meaning as agricultural product in RCW 82.04.213;

32 (11) Amounts derived from the production, sale, or transfer of  
33 electrical energy for resale within or outside the state or for  
34 consumption outside the state;

35 (12) Amounts derived from the distribution of water by a nonprofit  
36 water association and used for capital improvements by that nonprofit  
37 water association;



1 (13) Amounts paid by a sewerage collection business taxable under  
2 RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the  
3 treatment or disposal of sewage;

4 (14) Amounts derived from fees or charges imposed on persons for  
5 transit services provided by a public transportation agency. For the  
6 purposes of this subsection, "public transportation agency" means a  
7 municipality, as defined in RCW 35.58.272, and urban public  
8 transportation systems, as defined in RCW 47.04.082. Public  
9 transportation agencies (~~((shall))~~) must spend an amount equal to the  
10 reduction in tax provided by this tax deduction solely to adjust routes  
11 to improve access for citizens using food banks and senior citizen  
12 services or to extend or add new routes to assist low-income citizens  
13 and seniors.

14 **Sec. 26.** RCW 82.29A.020 and 2012 2nd sp.s. c 6 s 501 are each  
15 amended to read as follows:

16 The definitions in this section apply throughout this chapter  
17 unless the context requires otherwise.

18 (1) "Leasehold interest" means an interest in publicly owned real  
19 or personal property which exists by virtue of any lease, permit,  
20 license, or any other agreement, written or verbal, between the public  
21 owner of the property and a person who would not be exempt from  
22 property taxes if that person owned the property in fee, granting  
23 possession and use, to a degree less than fee simple ownership.  
24 However, no interest in personal property (excluding land or buildings)  
25 which is owned by the United States, whether or not as trustee, or by  
26 any foreign government may constitute a leasehold interest hereunder  
27 when the right to use such property is granted pursuant to a contract  
28 solely for the manufacture or production of articles for sale to the  
29 United States or any foreign government. The term "leasehold interest"  
30 includes the rights of use or occupancy by others of property which is  
31 owned in fee or held in trust by a public corporation, commission, or  
32 authority created under RCW 35.21.730 or 35.21.660 if the property is  
33 listed on or is within a district listed on any federal or state  
34 register of historical sites. The term "leasehold interest" does not  
35 include road or utility easements, rights of access, occupancy, or use  
36 granted solely for the purpose of removing materials or products  
37 purchased from a public owner or the lessee of a public owner, or

1 rights of access, occupancy, or use granted solely for the purpose of  
2 natural energy resource exploration. "Leasehold interest" does not  
3 include the preferential use of publicly owned cargo cranes and docks  
4 and associated areas used in the loading and discharging of cargo  
5 located at a port district marine facility. "Preferential use" means  
6 that publicly owned real or personal property is used by a private  
7 party under a written agreement with the public owner, but the public  
8 owner or any third party maintains a right to use the property when not  
9 being used by the private party.

10 (2)(a) "Taxable rent" means contract rent as defined in (c) of this  
11 subsection in all cases where the lease or agreement has been  
12 established or renegotiated through competitive bidding, or negotiated  
13 or renegotiated in accordance with statutory requirements regarding the  
14 rent payable, or negotiated or renegotiated under circumstances,  
15 established by public record, clearly showing that the contract rent  
16 was the maximum attainable by the lessor. However, after January 1,  
17 1986, with respect to any lease which has been in effect for ten years  
18 or more without renegotiation, taxable rent may be established by  
19 procedures set forth in (g) of this subsection. All other leasehold  
20 interests are subject to the determination of taxable rent under the  
21 terms of (g) of this subsection.

22 (b) For purposes of determining leasehold excise tax on any lands  
23 on the Hanford reservation subleased to a private or public entity by  
24 the department of ecology, taxable rent includes only the annual cash  
25 rental payment made by such entity to the department of ecology as  
26 specifically referred to as rent in the sublease agreement between the  
27 parties and does not include any other fees, assessments, or charges  
28 imposed on or collected by such entity irrespective of whether the  
29 private or public entity pays or collects such other fees, assessments,  
30 or charges as specified in the sublease agreement.

31 (c) "Contract rent" means the amount of consideration due as  
32 payment for a leasehold interest, including: The total of cash  
33 payments made to the lessor or to another party for the benefit of the  
34 lessor according to the requirements of the lease or agreement,  
35 including any rents paid by a sublessee; expenditures for the  
36 protection of the lessor's interest when required by the terms of the  
37 lease or agreement; and expenditures for improvements to the property  
38 to the extent that such improvements become the property of the lessor.

1 Where the consideration conveyed for the leasehold interest is made in  
2 combination with payment for concession or other rights granted by the  
3 lessor, only that portion of such payment which represents  
4 consideration for the leasehold interest is part of contract rent.

5 (d) "Contract rent" does not include: (i) Expenditures made by the  
6 lessee, which under the terms of the lease or agreement, are to be  
7 reimbursed by the lessor to the lessee or expenditures for improvements  
8 and protection made pursuant to a lease or an agreement which requires  
9 that the use of the improved property be open to the general public and  
10 that no profit will inure to the lessee from the lease; (ii)  
11 expenditures made by the lessee for the replacement or repair of  
12 facilities due to fire or other casualty including payments for  
13 insurance to provide reimbursement for losses or payments to a public  
14 or private entity for protection of such property from damage or loss  
15 or for alterations or additions made necessary by an action of  
16 government taken after the date of the execution of the lease or  
17 agreement; (iii) improvements added to publicly owned property by a  
18 sublessee under an agreement executed prior to January 1, 1976, which  
19 have been taxed as personal property of the sublessee prior to January  
20 1, 1976, or improvements made by a sublessee of the same lessee under  
21 a similar agreement executed prior to January 1, 1976, and such  
22 improvements are taxable to the sublessee as personal property; (iv)  
23 improvements added to publicly owned property if such improvements are  
24 being taxed as personal property to any person.

25 (e) Any prepaid contract rent is considered to have been paid in  
26 the year due and not in the year actually paid with respect to  
27 prepayment for a period of more than one year. Expenditures for  
28 improvements with a useful life of more than one year which are  
29 included as part of contract rent must be treated as prepaid contract  
30 rent and prorated over the useful life of the improvement or the  
31 remaining term of the lease or agreement if the useful life is in  
32 excess of the remaining term of the lease or agreement. Rent prepaid  
33 prior to January 1, 1976, must be prorated from the date of prepayment.

34 (f) With respect to a "product lease", the value is that value  
35 determined at the time of sale under terms of the lease.

36 (g) If it is determined by the department of revenue, upon  
37 examination of a lessee's accounts or those of a lessor of publicly  
38 owned property, that a lessee is occupying or using publicly owned

1 property in such a manner as to create a leasehold interest and that  
2 such leasehold interest has not been established through competitive  
3 bidding, or negotiated in accordance with statutory requirements  
4 regarding the rent payable, or negotiated under circumstances,  
5 established by public record, clearly showing that the contract rent  
6 was the maximum attainable by the lessor, the department may establish  
7 a taxable rent computation for use in determining the tax payable under  
8 authority granted in this chapter based upon the following criteria:  
9 (i) Consideration must be given to rental being paid to other lessors  
10 by lessees of similar property for similar purposes over similar  
11 periods of time; (ii) consideration must be given to what would be  
12 considered a fair rate of return on the market value of the property  
13 leased less reasonable deductions for any restrictions on use, special  
14 operating requirements or provisions for concurrent use by the lessor,  
15 another person or the general public.

16 (3) "Product lease" as used in this chapter means a lease of  
17 property for use in the production of agricultural or marine products,  
18 not including the production of marijuana as defined in RCW 69.50.101,  
19 to the extent that such lease provides for the contract rent to be paid  
20 by the delivery of a stated percentage of the production of such  
21 agricultural or marine products to the credit of the lessor or the  
22 payment to the lessor of a stated percentage of the proceeds from the  
23 sale of such products.

24 (4) "Renegotiated" means a change in the lease agreement which  
25 changes the agreed time of possession, restrictions on use, the rate of  
26 the cash rental or of any other consideration payable by the lessee to  
27 or for the benefit of the lessor, other than any such change required  
28 by the terms of the lease or agreement. In addition "renegotiated"  
29 means a continuation of possession by the lessee beyond the date when,  
30 under the terms of the lease agreement, the lessee had the right to  
31 vacate the premises without any further liability to the lessor.

32 (5) "City" means any city or town.

33 (6) "Products" includes natural resource products such as cut or  
34 picked evergreen foliage, Cascara bark, wild edible mushrooms, native  
35 ornamental trees and shrubs, ore and minerals, natural gas, geothermal  
36 water and steam, and forage removed through the grazing of livestock.

1        NEW SECTION.    **Sec. 27.**    A new section is added to chapter 84.34 RCW  
2    to read as follows:

3        The provisions of this chapter do not apply with respect to land  
4    used in the growing, raising, or producing of marijuana, useable  
5    marijuana, or marijuana-infused products as those terms are defined  
6    under RCW 69.50.101.

7        **Sec. 28.**    RCW 84.36.630 and 2003 c 302 s 7 are each amended to read  
8    as follows:

9        (1) All machinery and equipment owned by a farmer that is personal  
10   property is exempt from property taxes levied for any state purpose if  
11   it is used exclusively in growing and producing agricultural products  
12   during the calendar year for which the claim for exemption is made.

13        (2) "Farmer" ~~((has))~~ and "agricultural product" have the same  
14   meaning as defined in RCW 82.04.213.

15        (3) A claim for exemption under this section ~~((shall))~~ must be  
16   filed with the county assessor together with the statement required  
17   under RCW 84.40.190, for exemption from taxes payable the following  
18   year. The claim ~~((shall))~~ must be made solely upon forms as prescribed  
19   and furnished by the department of revenue.

20        **Sec. 29.**    RCW 84.40.030 and 2007 c 301 s 2 are each amended to read  
21   as follows:

22        (1) All property ~~((shall))~~ must be valued at one hundred percent of  
23   its true and fair value in money and assessed on the same basis unless  
24   specifically provided otherwise by law.

25        (2) Taxable leasehold estates ~~((shall))~~ must be valued at such  
26   price as they would bring at a fair, voluntary sale for cash without  
27   any deductions for any indebtedness owed including rentals to be paid.

28        (3) The true and fair value of real property for taxation purposes  
29   (including property upon which there is a coal or other mine, or stone  
30   or other quarry) ~~((shall))~~ must be based upon the following criteria:

31        ~~((+1+))~~ (a) Any sales of the property being appraised or similar  
32   properties with respect to sales made within the past five years. The  
33   appraisal ~~((shall))~~ must be consistent with the comprehensive land use  
34   plan, development regulations under chapter 36.70A RCW, zoning, and any  
35   other governmental policies or practices in effect at the time of  
36   appraisal that affect the use of property, as well as physical and

1 environmental influences. An assessment may not be determined by a  
2 method that assumes a land usage or highest and best use not permitted,  
3 for that property being appraised, under existing zoning or land use  
4 planning ordinances or statutes or other government restrictions. The  
5 appraisal ~~((shall))~~ must also take into account: ~~((a))~~ (i) In the  
6 use of sales by real estate contract as similar sales, the extent, if  
7 any, to which the stated selling price has been increased by reason of  
8 the down payment, interest rate, or other financing terms; and ~~((b))~~  
9 (ii) the extent to which the sale of a similar property actually  
10 represents the general effective market demand for property of such  
11 type, in the geographical area in which such property is located.  
12 Sales involving deed releases or similar seller-developer financing  
13 arrangements ~~((shall))~~ may not be used as sales of similar property.

14 ~~((2))~~ (b) In addition to sales as defined in subsection ~~((1))~~  
15 (3)(a) of this section, consideration may be given to cost, cost less  
16 depreciation, reconstruction cost less depreciation, or capitalization  
17 of income that would be derived from prudent use of the property, as  
18 limited by law or ordinance. Consideration should be given to any  
19 agreement, between an owner of rental housing and any government  
20 agency, that restricts rental income, appreciation, and liquidity; and  
21 to the impact of government restrictions on operating expenses and on  
22 ownership rights in general of such housing. In the case of property  
23 of a complex nature, or being used under terms of a franchise from a  
24 public agency, or operating as a public utility, or property not having  
25 a record of sale within five years and not having a significant number  
26 of sales of similar property in the general area, the provisions of  
27 this subsection ~~((shall))~~ must be the dominant factors in valuation.  
28 When provisions of this subsection are relied upon for establishing  
29 values the property owner ~~((shall))~~ must be advised upon request of the  
30 factors used in arriving at such value.

31 ~~((3))~~ (c) In valuing any tract or parcel of real property, the  
32 true and fair value of the land, exclusive of structures thereon  
33 ~~((shall))~~ must be determined; also the true and fair value of  
34 structures thereon, but the valuation ~~((shall))~~ may not exceed the true  
35 and fair value of the total property as it exists. In valuing  
36 agricultural land, growing crops ~~((shall))~~ must be excluded. For  
37 purposes of this subsection (3)(c), "growing crops" does not include  
38 marijuana as defined under RCW 69.50.101.

1       **Sec. 30.** RCW 82.02.010 and 2011 c 298 s 37 are each amended to  
2 read as follows:

3       For the purpose of this title, unless the context clearly requires  
4 otherwise:

5       (1) "Department" means the department of revenue of the state of  
6 Washington;

7       (2) "Director" means the director of the department of revenue of  
8 the state of Washington;

9       (3) "Marijuana," "marijuana-infused products," and "useable  
10 marijuana" have the same meanings as provided in RCW 69.50.101;

11       (4) "Taxpayer" includes any individual, group of individuals,  
12 corporation, or association liable for any tax or the collection of any  
13 tax hereunder, or who engages in any business or performs any act for  
14 which a tax is imposed by this title. "Taxpayer" also includes any  
15 person liable for any fee or other charge collected by the department  
16 under any provision of law, including registration assessments and  
17 delinquency fees imposed under RCW 59.30.050; and

18       ~~((4))~~ (5) Words in the singular number include the plural and the  
19 plural include the singular. Words in one gender include all other  
20 genders.

21       **Sec. 31.** RCW 15.13.270 and 2007 c 335 s 4 are each amended to read  
22 as follows:

23       (1) The provisions of this chapter relating to nursery dealer  
24 licensing do not apply to: ~~((1))~~ (a) Persons making casual or  
25 isolated sales that do not exceed one hundred dollars annually; ~~((2))~~  
26 (b) any garden club, conservation district, or charitable nonprofit  
27 association conducting not more than three sales per year for not more  
28 than four consecutive days each of horticultural plants which are grown  
29 by or donated to its members; ~~((3))~~ (c) educational organizations  
30 associated with private or public secondary schools; and (d) the  
31 production of marijuana and persons who are licensed as marijuana  
32 producers under RCW 69.50.325 with respect to the operations under such  
33 license. For the purposes of this subsection, the terms "marijuana"  
34 and "marijuana producer" have the same meanings as provided in RCW  
35 69.50.101. However, such a club, conservation district, association,  
36 or organization ~~((shall))~~ must apply to the director for a permit to  
37 conduct such sales.

1       (2) All horticultural plants sold under such a permit (~~shall~~)  
2 must be in compliance with the provisions of this chapter.

3       **Sec. 32.** RCW 15.13.270 and 2000 c 144 s 5 are each amended to read  
4 as follows:

5       (1) The provisions of this chapter relating to licensing do not  
6 apply to: (~~(1)~~) (a) Persons making casual or isolated sales that do  
7 not exceed one hundred dollars annually; (~~(2)~~) (b) any garden club,  
8 conservation district, or charitable nonprofit association conducting  
9 not more than three sales per year for not more than four consecutive  
10 days each of horticultural plants which are grown by or donated to its  
11 members; (~~(3)~~) (c) educational organizations associated with private  
12 or public secondary schools; and (d) the production of marijuana and  
13 persons who are licensed as marijuana producers under RCW 69.50.325  
14 with respect to the operations under such license. For the purposes of  
15 this subsection, the terms "marijuana" and "marijuana producer" have  
16 the same meanings as provided in RCW 69.50.101. However, such a club,  
17 conservation district, association, or organization (~~shall~~) must  
18 apply to the director for a permit to conduct such sales.

19       (2) All horticultural plants sold under such a permit (~~shall~~)  
20 must be in compliance with the provisions of this chapter.

21       **Sec. 33.** RCW 15.17.020 and 1998 c 154 s 2 are each amended to read  
22 as follows:

23       For the purpose of this chapter:

24       (1) "Agent" means broker, commission merchant, solicitor, seller,  
25 or consignor, and any other person acting upon the actual or implied  
26 authority of another.

27       (2) "Certification" means, but is not limited to, the issuance by  
28 the director of an inspection certificate or other official document  
29 stating the grade, classification, and/or condition of any fruits or  
30 vegetables, and/or if the fruits or vegetables are free of plant pests  
31 and/or other defects.

32       (3) "Combination grade" means two or more grades packed together as  
33 one, except cull grades, with a minimum percent of the product of the  
34 higher grade, as established by rule.

35       (4) "Compliance agreement" means an agreement entered into between



1 the department and a shipper or packer, that authorizes the shipper or  
2 packer to issue certificates of compliance for fruits and vegetables.

3 (5) "Container" means any container or subcontainer used to  
4 prepackage any fruits or vegetables. This does not include a container  
5 used by a retailer to package fruits or vegetables sold from a bulk  
6 display to a consumer.

7 (6) "Deceptive arrangement or display" means any bulk lot or load,  
8 arrangement, or display of fruits or vegetables which has in the  
9 exposed surface, fruits or vegetables which are so superior in quality,  
10 size, condition, or any other respect to those which are concealed, or  
11 the unexposed portion, as to materially misrepresent any part of the  
12 bulk lot or load, arrangement, or display.

13 (7) "Deceptive pack" means the pack of any container which has in  
14 the outer layer or any exposed surface fruits or vegetables which are  
15 in quality, size, condition, or any other respect so superior to those  
16 in the interior of the container in the unexposed portion as to  
17 materially misrepresent the contents. Such pack is deceptive when the  
18 outer or exposed surface is composed of fruits or vegetables whose size  
19 is not an accurate representation of the variation of the size of the  
20 fruits or vegetables in the entire container, even though the fruits or  
21 vegetables in the container are virtually uniform in size or comply  
22 with the specific standards adopted under this chapter.

23 (8) "Department" means the department of agriculture of the state  
24 of Washington.

25 (9) "Director" means the director of the department or his or her  
26 duly authorized representative.

27 (10) "District manager" means a person representing the director in  
28 charge of overall operation of a fruit and vegetable inspection  
29 district established under RCW 15.17.230.

30 (11) "Facility" means, but is not limited to, the premises where  
31 fruits and vegetables are grown, stored, handled, or delivered for sale  
32 or transportation, and all vehicles and equipment, whether aerial or  
33 surface, used to transport fruits and vegetables.

34 (12) "Fruits and vegetables" means any unprocessed fruits or  
35 vegetables, but does not include marijuana as defined in RCW 69.50.101.

36 (13) "Handler" means any person engaged in the business of  
37 handling, selling, processing, storing, shipping, or distributing

1 fruits or vegetables that he or she has purchased or acquired from a  
2 producer.

3 (14) "Inspection" means, but is not limited to, the inspection by  
4 the director of any fruits or vegetables at any time prior to, during,  
5 or subsequent to harvest.

6 (15) "Mislabel" means the placing or presence of any false or  
7 misleading statement, design, or device upon any wrapper, container,  
8 container label or lining, or any placard used in connection with and  
9 having reference to fruits or vegetables.

10 (16) "Person" means any individual, firm, partnership, corporation,  
11 company, society, or association, and every officer, agent, or employee  
12 thereof.

13 (17) "Plant pests" means, but is not limited to, any living stage  
14 of any insects, mites, nematodes, slugs, snails, protozoa, or other  
15 invertebrate animals, bacteria, fungi, viruses, or any organisms  
16 similar to or allied with any of the foregoing, or any infectious  
17 substance, which can directly or indirectly injure or cause disease or  
18 damage in any plant or parts thereof, or any processed, manufactured,  
19 or other products of plants.

20 (18) "Sell" means to sell, offer for sale, hold for sale, or ship  
21 or transport in bulk or in containers.

22 (19) "Standards" means grades, classifications, and other  
23 inspection criteria for fruits and vegetables.

24 **Sec. 34.** RCW 15.49.061 and 1989 c 354 s 76 are each amended to  
25 read as follows:

26 (1) The provisions of this chapter do not apply to marijuana seed.  
27 For the purposes of this subsection, "marijuana" has the same meaning  
28 as defined in RCW 69.50.101.

29 (2) The provisions of RCW 15.49.011 through 15.49.051 do not apply:

30 (a) To seed or grain not intended for sowing purposes;

31 (b) To seed in storage by, or being transported or consigned to a  
32 conditioning establishment for conditioning if the invoice or labeling  
33 accompanying the shipment of such seed bears the statement "seeds for  
34 conditioning" and if any labeling or other representation that may be  
35 made with respect to the unconditioned seed is subject to this chapter;

36 (c) To any carrier with respect to any seed transported or

1 delivered for transportation in the ordinary course of its business as  
2 a carrier if the carrier is not engaged in producing, conditioning, or  
3 marketing seeds subject to this chapter; or

4 (d) Seed stored or transported by the grower of the seed.

5 ((+2+)) (3) No person may be subject to the penalties of this  
6 chapter for having sold or offered for sale seeds subject to this  
7 chapter that were incorrectly labeled or represented as to kind,  
8 species, variety, or type, which seeds cannot be identified by  
9 examination thereof, unless he or she has failed to obtain an invoice,  
10 genuine grower's declaration, or other labeling information and to take  
11 such other precautions as may be reasonable to ensure the identity to  
12 be that stated. A genuine grower's declaration of variety shall affirm  
13 that the grower holds records of proof concerning parent seed, such as  
14 invoice and labels.

15 **Sec. 35.** RCW 20.01.030 and 2013 c 23 s 38 are each amended to read  
16 as follows:

17 This chapter does not apply to:

18 (1) Any cooperative marketing associations or federations  
19 incorporated under, or whose articles of incorporation and bylaws are  
20 equivalent to, the requirements of chapter 23.86 RCW, except as to that  
21 portion of the activities of the association or federation that involve  
22 the handling or dealing in the agricultural products of nonmembers of  
23 the organization: PROVIDED, That the associations or federations may  
24 purchase up to fifteen percent of their gross from nonmembers for the  
25 purpose of filling orders: PROVIDED FURTHER, That if the cooperative  
26 or association acts as a processor as defined in RCW 20.01.500(2) and  
27 markets the processed agricultural crops on behalf of the grower or its  
28 own behalf, the association or federation is subject to the provisions  
29 of RCW 20.01.500 through 20.01.560 and the license provision of this  
30 chapter excluding bonding provisions: PROVIDED FURTHER, That none of  
31 the foregoing exemptions in this subsection apply to any such  
32 cooperative or federation dealing in or handling grain in any manner,  
33 and not licensed under the provisions of chapter 22.09 RCW;

34 (2) Any person who sells exclusively his or her own agricultural  
35 products as the producer thereof;

36 (3) Any public livestock market operating under a bond required by  
37 law or a bond required by the United States to secure the performance

1 of the public livestock market's obligation. However, any such market  
2 operating as a livestock dealer or order buyer, or both, is subject to  
3 all provisions of this chapter except for the payment of the license  
4 fee required in RCW 20.01.040;

5 (4) Any retail merchant having a bona fide fixed or permanent place  
6 of business in this state, but only for the retail merchant's retail  
7 business conducted at such fixed or established place of business;

8 (5) Any person buying farm products for his or her own use or  
9 consumption;

10 (6) Any warehouse operator or grain dealer licensed under the state  
11 grain warehouse act, chapter 22.09 RCW, with respect to his or her  
12 handling of any agricultural product as defined under that chapter;

13 (7) Any nursery dealer who is required to be licensed under the  
14 horticultural laws of the state with respect to his or her operations  
15 as such licensee;

16 (8) Any person licensed under the now existing dairy laws of the  
17 state with respect to his or her operations as such licensee;

18 (9) Any producer who purchases less than fifteen percent of his or  
19 her volume to complete orders;

20 (10) Any person, association, or corporation regulated under  
21 chapter 67.16 RCW and the rules adopted thereunder while performing  
22 acts regulated by that chapter and the rules adopted thereunder;

23 (11) Any domestic winery, as defined in RCW 66.04.010, licensed  
24 under Title 66 RCW, with respect to its transactions involving  
25 agricultural products used by the domestic winery in making wine;

26 (12) Any person licensed as a marijuana producer or processor under  
27 RCW 69.50.325 with respect to the operations under such license. The  
28 definitions in RCW 69.50.101 apply to this subsection (12).

29 NEW SECTION. Sec. 36. Section 3 of this act expires July 1, 2015.

30 NEW SECTION. Sec. 37. Section 4 of this act takes effect July 1,  
31 2015.

32 NEW SECTION. Sec. 38. Section 5 of this act expires July 1, 2015,  
33 subject to the contingency stated in section 2, chapter . . . (ESSB  
34 5952), Laws of 2013 3rd sp. sess.

1        NEW SECTION.   **Sec. 39.**   Section 6 of this act takes effect July 1,  
2   2015, subject to the contingency stated in section 2, chapter . . .  
3   (ESSB 5952), Laws of 2013 3rd sp. sess.

4        NEW SECTION.   **Sec. 40.**   Section 10 of this act expires December 31,  
5   2020.

6        NEW SECTION.   **Sec. 41.**   Section 31 of this act expires July 1,  
7   2020.

8        NEW SECTION.   **Sec. 42.**   Section 32 of this act takes effect July 1,  
9   2020.

Passed by the Senate March 4, 2014.

Passed by the House March 12, 2014.

Approved by the Governor March 28, 2014.

Filed in Office of Secretary of State March 31, 2014.

# FINAL BILL REPORT

## SB 6505

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### C 140 L 14

#### Synopsis as Enacted

**Brief Description:** Delaying the use of existing tax preferences by the marijuana industry to ensure a regulated and safe transition to the controlled and legal marijuana market in Washington.

**Sponsors:** Senators Hargrove, Hill and Braun.

**Senate Committee on Ways & Means**  
**House Committee on Finance**

**Background:** Business and Occupation (B&O) Tax. Washington's major business tax is the B&O tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services, and activities not classified elsewhere. Several lower rates also apply to specific business activities.

Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes applies to the value of property, digital product, or service when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Property Tax. All real and personal property in this state is subject to the property tax each year based on its value, unless a specific exemption is provided by law. The tax bill is determined by multiplying the assessed value by the tax rate for each taxing district in which the property is located. The county treasurer mails a notice of tax due to taxpayers and collects the tax.

Tax Preferences. Washington has over 650 tax preferences authorized in law. A tax preference includes exemptions, deductions, credits, and preferential rates. Currently the agricultural industry has tax preferences for the B&O tax, retail sales and use tax, and property tax.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Marijuana for Recreational Use. In 2012 Washington voters approved Initiative 502, which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for nonmedical purposes. Under this system, the Liquor Control Board issues licenses to marijuana producers, processors, and retailers, and adopts standards for the regulation of these operations. Persons over 21 years of age may purchase up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, and 72 ounces of liquid marijuana-infused product. The initiative established a marijuana excise tax at each level of production; the excise tax is in addition to the state's B&O tax and retail sales tax.

**Summary:** Marijuana, useable marijuana, and marijuana-infused products are excluded from existing tax preferences. The growing or producing of marijuana products is explicitly removed from the definitions of agriculture and farmer, which eliminates the ability for persons in that industry to take advantage of the agriculture exemptions. The exclusions for marijuana include 8 B&O tax preferences; 16 sales and use tax preferences; 4 additional excise tax preferences; and 4 property tax preferences, 2 for real property and 2 for personal property.

Additionally, the act exempts persons producing marijuana and marijuana products from inspection and licensing by the Department of Agriculture in regard to plants, seeds, and packaging. Marijuana is not subject to agriculture commodity provisions.

**Votes on Final Passage:**

Senate	47	0
House	55	42

**Effective:** June 12, 2014  
July 1, 2015 (Section 4)  
July 1, 2020 (Section 32)  
Contingent (Section 6)

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 6505 SB	<b>Title:</b> Marijuana industry/tax prefs
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## Estimated Cash Receipts

Agency Name	2013-15		2015-17		2017-19	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	2,725,000	2,767,000	5,450,000	5,534,000	5,450,000	5,534,000
<b>Total \$</b>	<b>2,725,000</b>	<b>2,767,000</b>	<b>5,450,000</b>	<b>5,534,000</b>	<b>5,450,000</b>	<b>5,534,000</b>

Local Gov. Courts *						
Loc School dist-SPI						
Local Gov. Other **		735,640		1,484,282		1,485,282
Local Gov. Total		735,640		1,484,282		1,485,282

## Estimated Expenditures

Agency Name	2013-15			2015-17			2017-19		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	.0	2,700	2,700	.0	0	0	.0	0	0
<b>Total</b>	<b>0.0</b>	<b>\$2,700</b>	<b>\$2,700</b>	<b>0.0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.0</b>	<b>\$0</b>	<b>\$0</b>

## Estimated Capital Budget Impact

NONE

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). A fiscal analysis was prepared to show the projected ten-year cost to tax or fee payers of the proposed taxes or fees. The ten-year projection can be viewed at

<http://www.ofm.wa.gov/tax/default.asp>

<b>Prepared by:</b> Kathy Cody, OFM	<b>Phone:</b> (360) 902-9822	<b>Date Published:</b> Final 2/ 5/2014
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\* See Office of the Administrator for the Courts judicial fiscal note

\*\* See local government fiscal note

FNPID: 37143



# Department of Revenue Fiscal Note

<b>Bill Number:</b> 6505 SB	<b>Title:</b> Marijuana industry/tax prefs	<b>Agency:</b> 140-Department of Revenue
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## Part I: Estimates



No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2014	FY 2015	2013-15	2015-17	2017-19
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax		1,945,000	1,945,000	3,890,000	3,890,000
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax		767,000	767,000	1,534,000	1,534,000
GF-STATE-State 01 - Taxes 35 - Public Utilities Tax		13,000	13,000	26,000	26,000
Waste Reduct/Recycle/Litter Control Account-State 04 - St & Misc Rev 06 - Litter Control Reven		36,000	36,000	72,000	72,000
Multimodal Transportation Account-State 01 - Taxes 01 - Retail Sales Tax		1,000	1,000	2,000	2,000
Parks Renewal and Stewardship Account-State 04 - St & Misc Rev 06 - Litter Control Reven		2,000	2,000	4,000	4,000
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax		3,000	3,000	6,000	6,000
<b>Total \$</b>		2,767,000	2,767,000	5,534,000	5,534,000

### Estimated Expenditures from:

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.0		0.0		
<b>Account</b>					
GF-STATE-State 001-1	2,700		2,700		
<b>Total \$</b>	2,700		2,700		

### Estimated Capital Budget Impact:

NONE

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 01/29/2014
Agency Preparation: Steve Smith	Phone: 360-534-1518	Date: 01/31/2014
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 01/31/2014
OFM Review: Kathy Cody	Phone: (360) 902-9822	Date: 01/31/2014

Request # 6505-1-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

Though it is unlikely that the legislative intent of Washington's tax preferences contemplated legal marijuana markets, certain existing tax preferences could apply to marijuana-related activities legalized under Initiative 502.

This bill renders numerous tax preferences inapplicable to marijuana-related activities. The bill affects tax preferences for the business and occupation tax, sales and use tax, public utility tax, litter tax, leasehold excise tax, and property tax.

### II. B - Cash receipts Impact

*Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

#### ASSUMPTIONS

- All sections of this bill that do not have an explicit effective date are assumed to be effective on June 10, 2014. Those sections that are effective on July 1, 2015, and July 1, 2020, are merely replacing identical sections that expire on those dates.
- Ninety-four metric tons of marijuana with a crop value of \$169 million will be grown on 46 acres (2 million square feet, a limit established by the Liquor Control Board). The total retail value will be \$1.4 billion.
- The impacts of this proposal are assumed to be flat, not growing over the next five years, because it's unknown how this market will function over the period and future price movements are unknown.
- The Liquor Control Board has plans to limit production and sales in the early years, but these plans are subject to change.
- Banking and other financial issues have yet to be worked out.
- Since this industry will be so highly regulated, no compliance adjustment was made.

#### DATA SOURCES

- Department of Revenue and other agency sources.
- The 2012 Exemption Study.
- Liquor Control Board data and other marijuana data.

#### REVENUE ESTIMATES

State revenues will increase by \$2.8 million in Fiscal Year 2015.

Local revenues will increase by \$743,000 in Fiscal Year 2015.

#### TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2015 -	\$ 2,767
FY 2016 -	\$ 2,767
FY 2017 -	\$ 2,767
FY 2018 -	\$ 2,767
FY 2019 -	\$ 2,767

Local Government, if applicable (cash basis, \$000):

FY 2015 -	\$ 743
FY 2016 -	\$ 750
FY 2017 -	\$ 749

FY 2018 - \$ 750  
FY 2019 - \$ 750

DETAIL OF REVENUE IMPACT FOR PROPERTY TAX BILLS, Calendar Year Basis

State Government, Impact on Revenues (\$000)

CY 2015 - \$ 1  
CY 2016 - \$ 1  
CY 2017 - \$ 1  
CY 2018 - \$ 1  
CY 2019 - \$ 1

State Government, (\$000), Shift of Tax Burden

CY 2015 - \$ 7  
CY 2016 - \$ 13  
CY 2017 - \$ 13  
CY 2018 - \$ 14  
CY 2019 - \$ 14

Local Government, Impact on Revenues (\$000)

CY 2015 - \$ 7  
CY 2016 - \$ 14  
CY 2017 - \$ 13  
CY 2018 - \$ 14  
CY 2019 - \$ 14

Local Government, (\$000), Shift of Tax Burden

CY 2015 - \$ 26  
CY 2016 - \$ 49  
CY 2017 - \$ 49  
CY 2018 - \$ 50  
CY 2019 - \$ 52

**II. C - Expenditures**

*Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

**ASSUMPTIONS**

This bill affects 2,000 taxpayers.

**FIRST YEAR COSTS**

The Department of Revenue will incur total costs of \$2,700 in Fiscal Year 2014. These costs include:

- Labor Costs – Time and effort equates to 0.03 FTEs.
- Amend four administrative rules.

There are no ongoing costs associated with this bill.

### Part III: Expenditure Detail

#### III. A - Expenditures by Object Or Purpose

	FY 2014	FY 2015	2013-15	2015-17	2017-19
FTE Staff Years	0.0		0.0		
A-Salaries and Wages	1,700		1,700		
B-Employee Benefits	500		500		
E-Goods and Other Services	300		300		
J-Capital Outlays	200		200		
<b>Total \$</b>	<b>\$2,700</b>		<b>\$2,700</b>		

#### III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2014	FY 2015	2013-15	2015-17	2017-19
HEARINGS SCHEDULER	32,688	0.0		0.0		
TAX POLICY SP 2	61,628	0.0		0.0		
TAX POLICY SP 3	69,756	0.0		0.0		
WMS BAND 3	88,546	0.0		0.0		
<b>Total FTE's</b>	<b>252,618</b>	<b>0.0</b>		<b>0.0</b>		

### Part IV: Capital Budget Impact

*Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods*

NONE

None.

### Part V: New Rule Making Required

*Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.*

Should this legislation become law, the Department of Revenue will use the expedited process to amend WAC 458-20-210, titled: "Sales of tangible personal property for farming—Sales of agricultural products by farmers"; WAC 458-20-135, titled: "Extracting natural products"; WAC 458-20-136 01, titled: "Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment"; and WAC 458-20-244, titled: "Food and food ingredients". Persons affected by this rule-making would include marijuana producers, processors, and retailers.

# LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

<b>Bill Number:</b> 6505 SB	<b>Title:</b> Marijuana industry/tax prefs
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## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- ☒ Cities: Increased sales and use and property tax revenue
- ☒ Counties: Increased sales and use and property tax revenue
- ☒ Special Districts: Increased sales and use and property tax revenue
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

## Part II: Estimates

- ☐ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☐ Legislation provides local option:
- ☐ Key variables cannot be estimated with certainty at this time:

### Estimated revenue impacts to:

Jurisdiction	FY 2014	FY 2015	2013-15	2015-17	2017-19
City		244,365	244,365	492,617	492,916
County		249,644	249,644	504,046	504,412
Special District		241,631	241,631	487,619	487,954
<b>TOTAL \$</b>		735,640	735,640	1,484,282	1,485,282
<b>GRAND TOTAL \$</b>					3,705,204

### Estimated expenditure impacts to:

None

## Part III: Preparation and Approval

Fiscal Note Analyst: Darleen Muhly	Phone: (360) 725-5030	Date: 02/05/2014
Leg. Committee Contact:	Phone:	Date: 01/29/2014
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 02/05/2014
OFM Review: Kathy Cody	Phone: (360) 902-9822	Date: 02/05/2014

## Part IV: Analysis

### A. SUMMARY OF BILL

*Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.*

This bill would exclude marijuana-related activities and equipment from existing agricultural tax preferences. The bill affects tax preferences for the business and occupation tax, sales and use tax, public utility tax, litter tax, leasehold excise tax, and property tax.

### B. SUMMARY OF EXPENDITURE IMPACTS

*Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.*

According to the Washington Association of County Officials, this bill is not expected to impact expenditures for county assessors.

### C. SUMMARY OF REVENUE IMPACTS

*Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.*

This bill is estimated to increase local government sales and use tax revenue by \$736,000 annually and increase local government property tax by \$13,000 to 14,000 annually.

#### LOCAL GOVERNMENT SALES AND USE TAX IMPACT:

According to the Department of Revenue (DOR), the proposed legislation would increase total local government sales tax revenue statewide by \$736,000 annually, resulting in an additional \$247,082 for counties, \$242,273 for cities, and \$239,285 for special districts.

#### Sales and Use Tax Distribution Methodology:

The distributions in this note for cities, counties, and special districts are based on DOR data for local sales tax distributions from Calendar Year 2012. Mitigation payments and distributions to hospital benefit zones are not factored into this distribution. This results in a distribution of 33.91 percent to counties, 33.25 percent to cities and 32.84 percent to special districts. The 1 percent DOR administrative fee has also been deducted.

#### LOCAL GOVERNMENT PROPERTY TAX IMPACT:

According to the Department of Revenue fiscal note, this bill would result in the following revenue loss and tax shifts to local governments:

#### Local Government Revenue Impact by Fiscal Year (in dollars):

	COUNTIES	CITIES	SPECIAL DISTRICTS
FY 2015	2,562	2,092	2,346
FY 2016	5,124	4,185	4,692
FY 2017	4,758	3,886	4,357
FY 2018	5,124	4,185	4,692
FY 2019	5,124	4,185	4,692

#### Local Government Tax Shift by Calendar Year (in dollars):

	COUNTIES	CITIES	SPECIAL DISTRICTS
CY 2015	5,282	4,314	16,404
CY 2016	9,955	8,131	30,914
CY 2017	9,955	8,131	30,914
CY 2018	10,158	8,297	31,545
CY 2019	10,564	8,629	32,807

#### Tax Shift and Revenue Loss:

Tax exemptions lower the taxable value against which taxing districts levy their taxes. When exemptions are enacted, taxing districts may compensate for the loss in taxable value by increasing the tax rate for taxpayers who are not eligible for the exemptions.

Consequently, taxpayers who do not benefit from the exemption would pay a higher tax. This higher tax results in a tax shift from the exempt taxpayers to the non-exempt taxpayers. However, when a taxing district is restricted from increasing the tax rate due to a levy limit, the taxing district incurs a revenue loss. Local government revenue losses and tax shifts were computed by taking the DOR fiscal note data and multiplying the result by the property tax distribution for counties, cities and special districts. Property tax distribution among cities, counties and special districts is based on DOR's Property Tax Statistics 2012.

Calendar Year vs. Fiscal Year:

Note that a tax shift is presented by calendar year and a revenue loss is presented by fiscal year. Taxes are assessed and collected by the counties on a calendar-year basis. When a tax shift occurs, it is computed for the calendar year. Because revenue and expenditures are reported on a fiscal year basis, the revenue loss is also for a fiscal year.

SOURCES:

Department of Revenue fiscal note

Department of Revenue Property Tax Statistics 2013

Washington Association of County Officials





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-080

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<b>File ID:</b>	AB2022-080	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/26/2022	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Resolution supporting state legislative action resetting the deadline for participation in the voluntary stewardship program and supporting the consideration of an ordinance consistent with RCW 36.70A.710(b)(i-iii) in the event such legislation is passed

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This resolution affirms the County Council's support of HB 1856, which would extend the deadline for counties to participate in the Voluntary Stewardship Program to July 1, 2023.

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### HISTORY OF LEGISLATIVE FILE

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

PROPOSED BY: \_\_\_\_\_  
INTRODUCED: FEBRUARY 8, 2022

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

**RESOLUTION SUPPORTING STATE LEGISLATIVE ACTION RESETTING THE  
DEADLINE FOR PARTICIPATION IN THE VSP AND SUPPORTING THE  
CONSIDERATION OF AN ORDINANCE CONSISTENT WITH RCW 36.70A.710(b)(i-iii)  
IN THE EVENT SUCH LEGISLATION IS PASSED**

**WHEREAS**, the Washington State Growth Management Act (GMA) requires counties to develop plans for managing population growth and development; and

**WHEREAS**, GMA comprehensive plans must identify and protect critical areas, including those on agricultural lands, and they also must preserve farmland; and

**WHEREAS**, prior to 2011, the main tool for counties to protect critical areas on agricultural land was regulation, and this led to many legal battles; and

**WHEREAS**, the Washington State Legislature created the Voluntary Stewardship Program (VSP) in 2011 to give counties the option to develop locally led work plans that use voluntary, incentive-based tools to protect critical areas and viable agriculture; and

**WHEREAS**, pursuant to RCW 36.70A.710(1)(b), in order to be eligible to participate in the VSP, a county legislative authority was required to elect to participate within six months after July 22, 2011; and

**WHEREAS**, while 27 counties timely elected to participate in the VSP, Whatcom County did not and, therefore, it is not currently eligible to participate in the VSP;

**WHEREAS**, in January 2020, Washington State Senate Bill (SB) 6545, a bill that proposed resetting the deadline for a county to join the VSP to July 1, 2021, was introduced and its replacement bill, Substitute Senate Bill (SSB) 6545, did not pass;

**WHEREAS**, a similar bill, Washington State House Bill (HB) 1856, proposing resetting the deadline for a county to join the VSP to July 1, 2023 has been introduced in the current legislative session;

**WHEREAS**, the parties in *Whatcom Farm Bureau, et al. v. Whatcom County*, GMHB Case No. 18-2-0001, recognize that the County's participation in the VSP could resolve the Petitioners' issues with the County's current regulatory approach to protecting critical areas on agricultural lands in the County's critical areas regulations (WCC Chapter 16.16);

**WHEREAS**, the parties in *Whatcom Farm Bureau, et al. v. Whatcom County*, GMHB Case No. 18-2-0001 agree that it may be in the best interest of Whatcom County if the state legislature extended the deadline for participation in the VSP as it could allow Whatcom County to consider a non-regulatory option to protect critical areas on agricultural land that brings all stakeholders to the table to discuss and resolve conflicts, rather than costly, time-consuming litigation.

**NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that it is supportive of HB 1856, which would extend the deadline for counties to participate in the VSP until July 1, 2023, and it urges the state legislature to adopt this bill;

**BE IT FINALLY RESOLVED** by the Whatcom County Council that, if the deadline is extended, the County Council is supportive of considering the adoption of an ordinance establishing the VSP in Whatcom County, consistent with RCW 36.70A.710(b)(i-iii).

**APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2022.**

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen N Frakes, Civil Deputy Prosecutor



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-095

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File ID:	AB2022-095	Version:	1	Status:	Agenda Ready
File Created:	02/01/2022	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Council Appointment		
Assigned to:	Council			Final Action:	
Agenda Date:	02/08/2022			Enactment #:	

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

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

Appointment to fill a vacancy on the Flood Control Zone District Advisory Committee, Geographic Area Representative position - alternates: Theresa Sygitowicz, Daniel Dahlquist, Joni Hensley, Keith Hoekema, Loren Hoekema (Council acting as the Flood Control Zone District Board of Supervisors)

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

Due to a resignation on the Advisory Committee, there is a geographic area representative vacancy. The appointee will serve a partial term ending 1/31/2026. Per WCC 100.02.080, "When a mid-term vacancy occurs, the board may choose to solicit additional applications, or it may decide to fill the vacancy from the alternate list without soliciting additional applications if it determines that an alternate can fill the vacancy while maintaining the desired geographic and stakeholder diversity or the appropriate governmental representation on the committee."

Theresa Sygitowicz, Daniel Dahlquist, Joni Hensley, Keith Hoekema, and Loren Hoekema are advisory committee alternates. Council may appoint one of these alternates to the vacant position or choose to delay appointment and solicit additional applications.

REQUESTED ACTION: Appoint one of the alternates OR decide to solicit additional applications.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:**    Application Theresa Sygitowicz, Application Daniel Dahlquist, Application Keith Hoekema,  
Application Joni Hensley, Application Loren Hoekema

NaDean Hanson

Geographic)

**From:** noreply@civicplus.com  
**Sent:** Sunday, January 07, 2018 1:24 PM  
**To:** Ben Glassett; Jill Nixon; Suzanne Mildner; Kristi Felbinger; Dana Brown-Davis; Executive; NaDean Hanson  
**Subject:** Online Form Submittal: Board and Commission Application

## Board and Commission Application

### Step 1

#### Application for Appointment to Whatcom County Boards and Commissions

##### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

**First Name** Theresa

**Last Name** Sygitowicz

**Date** 1/5/2018

**Street Address** 3031 Clipper Rd

**City** Deming

**Zip** 98244

**Do you live in & are you registered to vote in Whatcom County?** Yes

**Do you have a different mailing address?** Field not completed.

**Primary Telephone** 3605955035

**Secondary Telephone** Field not completed.

**Email Address** [thesyg@aol.com](mailto:thesyg@aol.com)

### Step 2

1. Name of Board or  
Committee

Flood Control Zone District Advisory Committee

Flood Control Zone  
District Advisory  
Committee

Geographic Area representative

2. Do you meet the  
residency, employment,  
and/or affiliation  
requirements of the  
position for which you're  
applying?

Yes

3. Which Council district  
do you live in?

District 3

4. Are you a US citizen?

Yes

5. Are you registered to  
vote in Whatcom County?

Yes

6. Have you declared  
candidacy (as defined by  
RCW 42.17A.055) for a  
paid elected office in any  
jurisdiction within the  
county?

No

7. Have you ever been a  
member of this  
Board/Commission?

Yes

If yes, please list dates:

I was a one year appointment for Special Dist. This was about  
5 or 6 years ago.

8. Do you or your spouse  
have a financial interest  
in or are you an employee  
or officer of any business  
or agency that does  
business with Whatcom  
County?

No

You may attach a resume  
or detailed summary of  
experience, qualifications,  
& interest in response to  
the following questions

*Field not completed.*

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

\*I am a retired health care worker/ farmer. \* I have a lot of proven success experiences working on water issues in the So Fork Valley. Both sides of my family are considered by the community to be pioneer families in the area. My family has farmed in the valley for over 120 years, always along the river. \* I currently service as an elected member of the Whatcom County Conservation Supervisor Board Member. I am President of the So. Fork Heritage Assoc. I am a member of the So Fork Watershed Education Committee. \* I am a retired volunteer EMT/Fireman for WCFD #16. \* over 40 years of committee service ( if necessary a further expansive list is available) \* Live long resident of the valley. \* Graduate of Mt Baker High School \* Various college degrees.

10. Please describe why you're interested in serving on this board or commission

The South Fork Valley needs to be represented by an person that has some historical background. I have a varied list of community members that I can call on for support. I believe in open and transparent government. I encourage others to also attend the meetings that I attend.

References (please include daytime telephone number):

Mel and Kathy Kuipers- 360-592-2000 - long time So Fork River farmer/ owns riverfront property Mike Boice - 360-595-2259 - long time So Fork. River Farmer/owns riverfront property Chris Hatch - 360-595-0953 - Acme resident Maryanne Strachila Akre- 360-739-6450 - long time So Fork farming family- owns riverfront property Jim Strachila - 360-951-9735- Acme Resident - long time So Fork family. owns riverfront property

Signature of applicant:

Theresa Sygitowicz

Place Signed / Submitted

Clipper , WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)



**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Wednesday, June 9, 2021 3:05:23 PM

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## Board and Commission Application

### Step 1

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Application for Appointment to Whatcom County Boards and Commissions

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#### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

---

Title	Mr.
First Name	Daniel
Last Name	Dahlquist
Today's Date	2/19/1989
Street Address	1386 W Axton Rd
City	Ferndale
Zip	98248
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	3604837141
Secondary Telephone	Field not completed.
Email Address	dj@pottleandsons.com

---

### Step 2

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1. Name of Board or      Flood Control Zone District Advisory Committee

## Committee

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Flood Control Zone District Advisory Committee Position:	Alternate
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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
--	-----

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3. Which Council district do you live in?	District 4
---	------------

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4. Are you a US citizen?	Yes
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5. Are you registered to vote in Whatcom County?	Yes
--	-----

---

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
--	----

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7. Have you ever been a member of this Board/Commission?	No
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8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
---	----

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You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<a href="#">Resume 2021 Dahlquist.pdf</a>
--	---

the following questions

---

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	See attached resume.
---	----------------------

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10. Please describe why you're interested in serving on this board or commission	It is relevant to my interests and professional experience, and I want to help improve my local community.
--	--

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References (please include daytime telephone number):	<i>Field not completed.</i>
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Signature of applicant:	Daniel J Dahlquist
-------------------------	--------------------

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Place Signed / Submitted	Ferndale, WA
--------------------------	--------------

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(Section Break)

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Email not displaying correctly? [View it in your browser.](#)

# Daniel Dahlquist

360-483-7141

[thedjdahlquist@gmail.com](mailto:thedjdahlquist@gmail.com)

## Expertise

### Skills

Google Ads  
Google Analytics  
Facebook Analytics  
Social Media Management  
Project Management  
SEO & SEM  
CRM  
Editing

## Technology

### Proficiency

Google Suite  
Adobe Photoshop  
Adobe InDesign  
Adobe Spark  
Adobe Premiere Pro  
Microsoft Office  
Wordpress w/ Elementor  
Mailchimp  
Windows & OSX

## Certificates

### Exceed

Google Ads Certified

## Education

**Washington State University • Pullman • WA**

*(Jan 2017 - Dec 2019)*

**BA Business Administration - Marketing ; Minor Biological Science**

As a student at Washington State University there were several projects which provided the opportunity to learn about data analysis and how to apply that data to bring value to both customers and the business. I led groups where we designed ad campaigns, managed marketing budgets, incorporated Google and Facebook analytics, performed SEO, and much more. I passed WSU's graduation writing requirement with a distinction award, putting me among the top 10% of my peers for writing proficiency. I also attained a minor in Biology during this time.

## Work Experience

**Pottle & Sons Construction • Bellingham • WA**

*(April 2020 - Present)*

**Project Manager; Proposal Developer**

Working for a relatively small construction firm I was given the opportunity to work in and across many disciplines. I originally came on to develop and implement their COVID mitigation plan, soon took over development of their safety protocols, which then led to me designing and consolidating their project proposals. Through this process I got to corroborate with every level of the business from estimation and finance to direct contact with suppliers. I also supervised projects on-site, gaining experience in the delivery side of the industry. During this period I also reworked the company website which was wildly out of date; incorporated SEO and monitored for KPIs. This job is great, but work can be very seasonal and I want the opportunity to utilize my degree and the technical knowledge I have obtained over the years.

**Pottle & Sons Construction • Bellingham • WA**

*(Jan 2010 - Dec 2016)*

**Office Assistant ; I.T.**

My responsibilities as an office assistant included answering phones, greeting walk-ins, data entry, computer troubleshooting, sorting mail, and cleaning. I would also run errands, making bank deposits

## References

Pavan Munaganti

Teaching Assistant – Washington State University

[pavan.munaganti@wsu.edu](mailto:pavan.munaganti@wsu.edu)

509-335-4102

Mark Pottle

VP - Pottle & Sons Construction

[mark@pottleandsons.com](mailto:mark@pottleandsons.com)

360-384-1543

*My references prefer to be contacted by email. More available upon request.*

**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Thursday, November 18, 2021 8:00:07 AM

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## Board and Commission Application

### Step 1

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Application for Appointment to Whatcom County Boards and Commissions

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#### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

---

Title Mr.

---

First Name Keith

---

Last Name Hoekema

---

Today's Date 11/18/2021

---

Street Address 2302 Joseph Pl

---

City Ferndale

---

Zip 98248

---

Do you live in & are you registered to vote in Whatcom County? Yes

---

Do you have a different mailing address? *Field not completed.*

---

Primary Telephone 3604100183

---

Secondary Telephone *Field not completed.*

---

Email Address khoekema@yahoo.com

---

### Step 2

---

1. Name of Board or Flood Control Zone District Advisory Committee

## Committee

---

Flood Control Zone District Advisory Committee Position:	Alternate
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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
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3. Which Council district do you live in?	District 3
---	------------

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4. Are you a US citizen?	Yes
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5. Are you registered to vote in Whatcom County?	Yes
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---

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
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---

7. Have you ever been a member of this Board/Commission?	No
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8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
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You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<i>Field not completed.</i>
--	-----------------------------

the following questions

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	I am currently employed for the Phillips 66 Refinery in Ferndale as a Maintenance coordinator. Bellingham Technical college graduate with a degree in instrumentation and process controls AAS
10. Please describe why you're interested in serving on this board or commission	I am interested in being an alternate on the flood control advisory committee. I Grew up in the middle of the Everson spill way and my family still does, I have a vested interest in keeping both the community and family safe and with the coming renewed interest of how the Nooksack floods in this unique area I bring practical experience by having lived through floods over the last 38 years and I believe I can be of great use to the committee.
References (please include daytime telephone number):	Paul Perry 360-920-8983 Felipe Alonso 360-220-0519 Michael Collins 360-319-2714
Signature of applicant:	Keith Hoekema
Place Signed / Submitted	Ferndale WA

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(Section Break)

Email not displaying correctly? [View it in your browser.](#)

**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Monday, December 20, 2021 1:54:30 PM

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## Board and Commission Application

### Step 1

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Application for Appointment to Whatcom County Boards and Commissions

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#### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

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Title	Field not completed.
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First Name	Joni
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Last Name	Hensley
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---

Today's Date	12/20/2021
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Street Address	3160 Alm Rd
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City	Everson
------	---------

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Zip	98247
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---

Do you live in & are you registered to vote in Whatcom County?	Yes
--	-----

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Do you have a different mailing address?	Field not completed.
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Primary Telephone	1-360-319-2918
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Secondary Telephone	1-360-966-4653
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Email Address	jonihensley.bsn.rn@gmail.com
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### Step 2

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1. Name of Board or	Flood Control Zone District Advisory Committee
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## Committee

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Flood Control Zone District Advisory Committee Position:	Alternate
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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
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3. Which Council district do you live in?	District 2
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4. Are you a US citizen?	Yes
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5. Are you registered to vote in Whatcom County?	Yes
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6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
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7. Have you ever been a member of this Board/Commission?	No
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8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
---	----

---

You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<i>Field not completed.</i>
--	-----------------------------

the following questions

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9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Retired registered nurse; BSN WSU; BS Environmental Science WWU 40+ year resident of Whatcom County; volunteer with Health Ministries Network, WSNA, Foothills Community Alliance, Unbridled Spirit 7
---	--

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10. Please describe why you're interested in serving on this board or commission	Living adjacent to the Sumas River for many years has given me personal experience in dealing with living in a flood-prone area. I have attended meetings in the past that dealt with Swift Creek and sedimentation problems and have participated in advocating for remediation activities.
--	--

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References (please include daytime telephone number):	Emily Gibson, MD; 360-305-1690
---	--------------------------------

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Signature of applicant:	Joni Hensley
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Place Signed / Submitted	Everson, WA 98247
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(Section Break)

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Email not displaying correctly? [View it in your browser.](#)

**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Wednesday, January 12, 2022 12:06:39 PM

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## Board and Commission Application

### Step 1

Application for Appointment to Whatcom County Boards and Commissions

#### Public Statement

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Title *Field not completed.*

First Name Loren

Last Name Hoekema

Today's Date 1/12/2022

Street Address 7371 Emerson rd

City Everson rd

Zip 98247

Do you live in & are you registered to vote in Whatcom County? Yes

Do you have a different mailing address? *Field not completed.*

Primary Telephone 3608154880

Secondary Telephone *Field not completed.*

Email Address lorenhhoekema5@gmail.com

### Step 2

1. Name of Board or Flood Control Zone District Advisory Committee

## Committee

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Flood Control Zone District Advisory Committee Position:	Geographic Area representative <i>Clerk's Note: There are no Geographic Area Rep vacancies at this time. Mr. Hoekema indicated via email he is interested in applying as an alternate.</i>
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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
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3. Which Council district do you live in?	District 4
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4. Are you a US citizen?	Yes
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5. Are you registered to vote in Whatcom County?	Yes
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6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
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7. Have you ever been a member of this Board/Commission?	No
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8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
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You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<i>Field not completed.</i>
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---

the following questions

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9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	I have lived on the Nooksack river for 40 years and watched massive flood destroy property and livelihoods. I would like to voice some insights on how we can control and mitigate soomuch destruction.
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10. Please describe why you're interested in serving on this board or commission	To help manage the flooding in the Nooksack river.
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References (please include daytime telephone number):	Paula Cooper Harris 3608153797
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Signature of applicant:	Loren Hoekema
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Place Signed / Submitted	Everson Wa
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(Section Break)

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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: AB2022-094

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<b>File ID:</b>	AB2022-094	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<b>Entered by:</b>	SMildner@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Executive Appointment		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Request confirmation of Executive Sidhu's reappointment of Kara Allen to the North Sound Behavioral Health Administrative Services Organization's board

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See memorandum and application

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Recommendation from North Sound BH-ASO, Allen Application



## Memorandum

**TO: EXECUTIVE SATPAL SIDHU**

**FROM:** Jackie Mitchell

**DATE:** JAN 25, 2022

**RE: NOMINATION TO THE NORTH SOUND BEHAVIORAL ORGANIZATION  
HEALTH ADVISORY BOARD**

*Pls. Appoint*

---

I am pleased to forward a nomination for the **NORTH SOUND ADMINISTRATIVE SERVICES ORGANIZATION (ASO) BEHAVIORAL HEALTH (BH) ADVISORY BOARD**.

Kara Allen (formerly Mitchell) has experience with substance use disorders and she and her husband are setting up clean and sober housing and job experience for people in recovery in Whatcom County. Her "lived" experience has been a great asset to the ASO's BH Advisory Board.

We highly recommend Kara for a second term to the North Sound BHO Advisory Board.

Thank you for considering this nomination.





## Application for Appointment to Whatcom County Boards and Commissions

### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

Title	Field not completed.
First Name	Kara
Last Name	Allen
Today's Date	1/25/2022
Street Address	2631 Pacific Highlands Ave
City	Ferndale
Zip	98248
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	360932072
Secondary Telephone	Field not completed.
Email Address	<a href="mailto:kara@ascendingopportunities.org">kara@ascendingopportunities.org</a>
1. Name of Board or Committee	<b>North Sound Behavioral Health Organization</b>
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 1
4. Are you a US citizen?	Yes
5. Are you registered to vote in Whatcom County?	Yes



6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	Yes
If yes, please list dates:	I have been on this board since 2019 I believe, I completely forgot to re-submit my application
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<i>Field not completed.</i>
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	I am a self employed business owner, my interest in this board is due to my long lived experience with mental health and substance abuse.
10. Please describe why you're interested in serving on this board or commission	I have 6+ years of recovery, I am very integrated in the recovery community in Whatcom County, I am on the SAC advisory board as well. My goal is to be involved in our community to help bring awareness about recovery and mental health.
References (please include daytime telephone number):	3609320720
Signature of applicant:	Kara Allen
Place Signed / Submitted	/KaraAllen/



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2021-420

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<b>File ID:</b>	AB2021-420	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	07/14/2021	<b>Entered by:</b>	JFleisch@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>	02/08/2022	<b>Enactment #:</b>			

---

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

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

Ordinance amending the Whatcom County Comprehensive Plan Map and zoning code for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest

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

A Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker-Snoqualmie National Forest. The proposed map amendment will amend the Mineral Resource Lands Comprehensive Plan Designation to Rural Forestry, to match the zoning district. The zoning code amendment will include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone. The proposal affects approximately 66 acres of privately held lands on/near Wells Creek Road, off of State Route 542 - Mt. Baker Hwy, Assessor's Parcel Numbers 400831580150, 400831450200, 390806550550.

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### **HISTORY OF LEGISLATIVE FILE**

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Date:	Acting Body:	Action:	Sent To:
07/27/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
08/10/2021	Council	HEARD PUBLIC TESTIMONY	

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08/10/2021 Council

FORWARDED FOR  
CONCURRENT REVIEW

Council

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**Attachments:** Staff Memo, Proposed Ordinance, Staff Report

**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius, AICP**  
Director

## Memorandum

TO: The Honorable Satpal Sidhu, Whatcom County Executive  
The Honorable Whatcom County Council

FROM: Joshua Fleischmann, Planner

THROUGH: Mark Personius, Director

DATE: July 14, 2021

SUBJECT: PLN2020-00004 - Rural Forestry Designation and Text Amendment -  
Nooksack Falls

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This memo is intended to provide background on a docketed amendment for a Comprehensive Plan Map amendment and zoning code amendment for the Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest.

The subject properties totaling approximately 66 acres exist as privately held lands surrounded by the Mount Baker -Snoqualmie National Forest. These lands were part of an Interim Zoning Ordinance from 1972 which was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these (and other) fee lands within the National Forest, Wilderness and Recreation areas. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and the Rural Forestry zoning designation.

In the early 1900's, mining related activities and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan Map and zoning code text amendments are in response to these changed circumstances.

The Planning Commission held a public hearing on the proposal on July 8th. Upon conclusion of the public hearing, the Planning Commission moved to recommend this amendment to the County Council for approval along with the findings of fact. The motion carried by a vote of 7-0-1.

Final approval of Comprehensive Plan Map amendment would occur as part of concurrent review of comprehensive plan amendments from 2021.

I look forward to discussing the merits of this recommendation with you.

SPONSORED BY: \_\_\_\_\_

PROPOSED BY: \_\_\_\_\_

INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE # \_\_\_\_\_

AN AMENDMENT TO THE OFFICIAL COMPREHENSIVE PLAN MAP FOR THE APPROXIMATELY 66-ACRE NOOKSACK FALLS EXCLAVE WITHIN THE MOUNT BAKER SNOQUALMIE NATIONAL FOREST, AND AMENDMENT TO THE RURAL FORESTRY ZONING CODE TO INCLUDE THE NOOKSACK FALLS EXCLAVE AS AN AREA WHERE CERTAIN CONDITIONAL USE PERMIT APPLICATIONS MAY BE SUBMITTED.

**WHEREAS**, an application has been submitted by AVT Consulting to amend the Comprehensive Plan Map to change the Mineral Resource Land (MRL) designation to Rural Forestry for the approximately 66-acre Nooksack Falls Exclave within the Mount Baker Snoqualmie National Forest, and to amend the Rural Forestry zoning code to include the Nooksack Falls Exclave as an area where a Conditional Use Permit application may be submitted for facilities intended to provide education related to forestry, natural resources and wildlife, and the purpose of the Rural Forestry zone.

**WHEREAS**, the site is located on Wells Creek Road, off Mt. Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. The proposal is situated within portions of Section 31, T40N, R8E and Section 6, T39N R8E W.M. Assessor's Parcel #'s 400831580150, 400831450200, and 390806550550; and

**WHEREAS**, the proposed amendment has been reviewed under the State Environmental Policy Act (SEPA); and

**WHEREAS**, the proposed amendment meets the approval criteria for comprehensive plan amendments, as required by Whatcom County Code (WCC) 22.10.060; and

**WHEREAS**, notice of the Whatcom County Planning Commission hearing on the proposed amendment was published in the Bellingham Herald, mailed and posted; and

**WHEREAS**, the Whatcom County Planning Commission held a public hearing on the proposed amendment and considered all testimony, and recommended approval; and

**WHEREAS**, the Whatcom County Planning Commission forwarded its findings and reasons for action to the County Council; and

**WHEREAS**, the County Council held a public hearing on the proposed amendment and considered all testimony; and

**WHEREAS**, the County Council has adopted the following findings of fact and conclusions:

## FINDINGS

1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.
6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
8. On May 25, 2011 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Whatcom County Comprehensive Plan does not contain specific criteria for de-designating Mineral Resource Lands.
10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been

demonstrated that this designation criterion has been met.

13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites meeting the above criteria (criteria 1-4) will be designated." The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.
17. Mineral resource designation criterion #6 states "The site shall have a proven resource that meets the following criteria:
  - Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
  - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot)."The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.
18. Mineral resource designation criterion #7 states "MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities." The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.
19. Mineral resource designation criterion #8 states "MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is

prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor." The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

20. Mineral resource designation criterion #9 states "MRL Designation should not enclose by more than 50% non-designated parcels." There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.
21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
  - soil conditions
  - quality of mineral resource
  - sustainable productivity of forest resourceIt has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available



through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.
30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

## **CONCLUSIONS**

1. The proposed amendment is consistent with the approval criteria of WCC 22.10.060.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the Whatcom County Comprehensive Plan map is hereby amended from Mineral

Resource Lands (MRL) to Rural Forestry as shown in Exhibit A.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the Whatcom County Zoning Code is hereby amended as shown in Exhibit B.

**BE IT FURTHER ORDAINED** that if any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

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

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

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

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

/s/ Royce Buckingham, approved electronically

Royce Buckingham  
Executive Civil Deputy Prosecutor

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

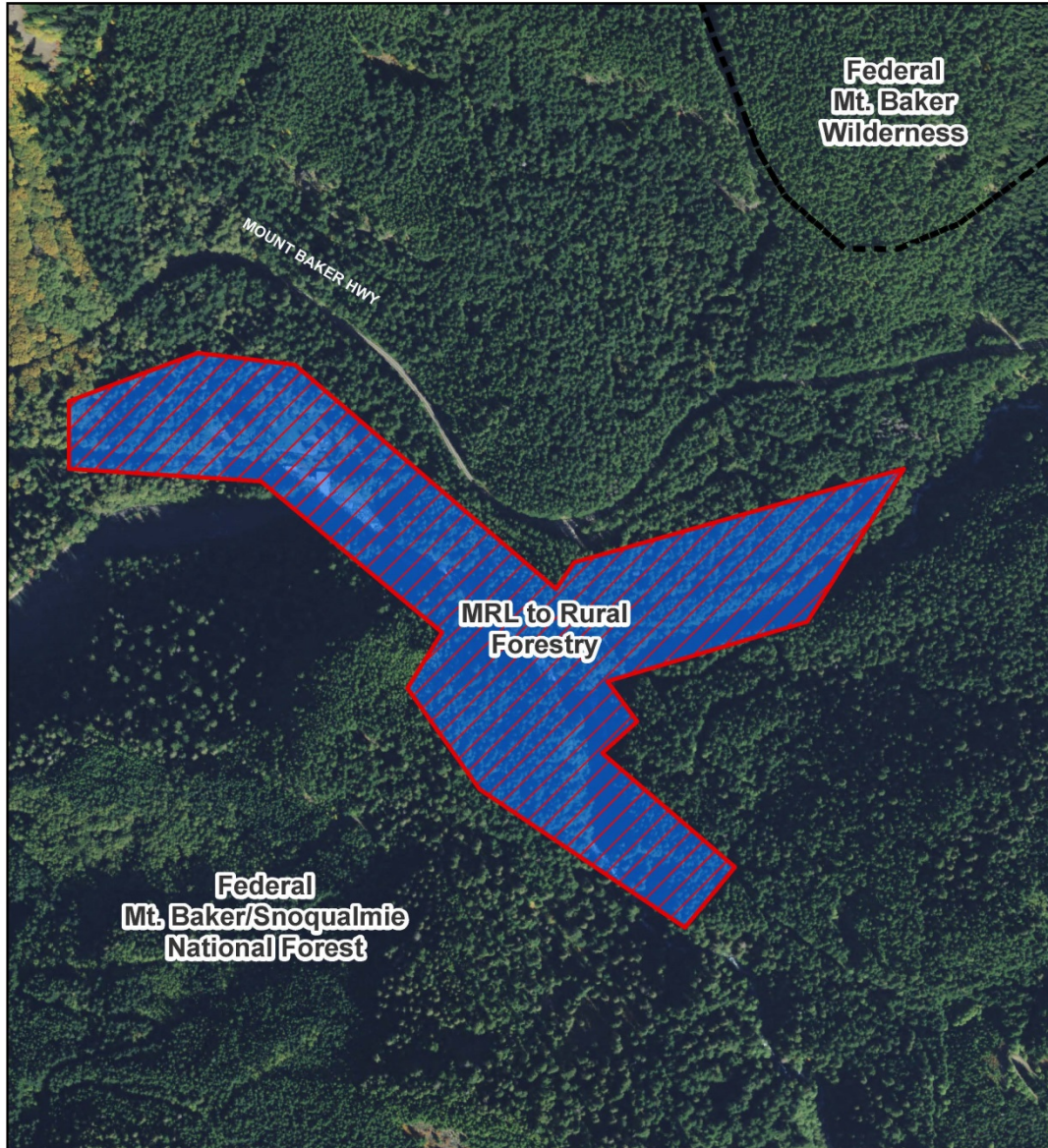
(    ) Approved      (    ) Denied

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

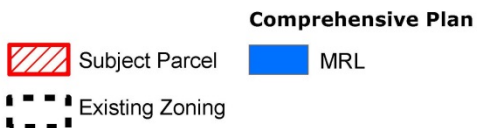
# Exhibit A

## Comprehensive Plan Map Amendment

Comprehensive Plan/Zoning



**PLN2020-00004 - Rural Forestry Designation and Text Amendment**  
**Comprehensive Plan Designation - Mineral Resource Lands (MRL)**  
**to Rural Forestry for approximately 66 acres in the Nooksack Falls**  
**exclave**



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, other express or implied. No representation or warranty is made concerning the accuracy, correctness, 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 damages, loss, or liability suffered from use of this map.

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# Exhibit B

## Title 20 Zoning Amendments

### Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

#### 20.42.150 Conditional Uses

**.155** The operation of facilities intended to provide education related to forestry, natural resource and wildlife and the purpose of this district, including but not limited to demonstration forests and conservation laboratories, educational meeting facilities and related uses including rental cabins or other lodging structures, cooking and dining facilities, retail sales or meeting supplies and gifts, in the Foothills Subarea, South Fork Valley, the Newhalem Exclave, ~~and~~ the Baker Lake Exclave, and the Nooksack Falls Exclave, provided the following standards are met:

- (1) Density shall not exceed one sleeping unit per one gross acre or a maximum for 50 beds for the entire development.
- (2) Each cabin shall have a maximum of three sleeping units.
- (3) Must be located with vehicular access fronting on paved county roads or private roads improved to county standards.
- (4) Front yard setback shall be 75 feet, with 100-foot side and rear yard setbacks to adjacent properties.
- (5) Lot coverage for all facilities, including the rental cabins, shall not exceed 20 percent, clustered on no more than 50 percent of the property.

# **Exhibit C**

SEPA Threshold Determination  
SEPA Distribution List

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius, AICP**  
Director

## SEPA Determination of Nonsignificance (DNS)

**File:** SEP2021-00038

**Project Description:** Amend Whatcom County Comprehensive Plan Map designation from Mineral Resource Land to Rural Forestry, to match the zoning district. Amend Whatcom County Code WCC 20.42.155 to include the Nooksack Falls Area Exclave.

**Proponent:** Excelsior Properties LLC & Excelsior Properties II LLC

**Address and Parcel #:** 12251 Mt Baker Highway / 400831580150, 400831450200 & 390806550550

**Lead Agency:** Whatcom County Planning & Development Services

**Zoning:** RF

**Comp Plan:** MRL

**Shoreline Jurisdiction:** Conservation

The lead agency for this proposal has determined that no significant adverse environmental impacts are likely. This proposal will also be reviewed for compliance with all applicable Whatcom County Codes (WCC) which regulates development activities, including but not limited to: WCC 15 – Buildings and Construction, WCC 16.16 – Critical Areas, WCC 17 – Flood Damage Prevention, WCC 20 – Zoning, WCC 21 – Land Division Regulations, WCC 23 – Shoreline Management Program, the Whatcom County Development Standards and/or the Washington State Stormwater Manual. Mitigation may be a requirement of Whatcom County Code. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☒ Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on May 7, 2021 and should be sent to: Josh Fleischmann via email at JFleisch@co.whatcom.wa.us

**Responsible Official:** Mark Personius, mpersoni@co.whatcom.wa.us

**Title:** Director

**Telephone:** 360-778-5937

**Address:** 5280 Northwest Drive  
Bellingham, WA 98226

**Date of Issuance:** April 23, 2021

**Signature:**  \_\_\_\_\_

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding May 17, 2021.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

SEPA Determination of Nonsignificance (DNS)  
PL4-83-005E

Page 1 of 1  
REV February 2021 **673**



**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius, AICP**  
Director

SEPA Distribution List  
SEP2021-00038  
Date of Issuance: April 23, 2021

Please review this determination. If you have further comments or questions, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email  
Stephanie Jolivet, [stephanie.jolivet@dahp.wa.gov](mailto:stephanie.jolivet@dahp.wa.gov)  
[SEPA@dahp.wa.gov](mailto:SEPA@dahp.wa.gov)

SEPA Unit, WA State Department of Ecology, Olympia via email  
[sepaunit@ecy.wa.gov](mailto:sepaunit@ecy.wa.gov)

WA State Department of Fish and Wildlife  
Wendy D. Cole via email [wendy.cole@dfw.wa.gov](mailto:wendy.cole@dfw.wa.gov)

WA State Department of Natural Resources via email  
Rochelle Goss, [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov)  
Brenda Werden, [Brenda.werden@dnr.wa.gov](mailto:Brenda.werden@dnr.wa.gov)

SEPA Unit, WA State Department of Transportation, Burlington via email  
Roland Storme, [stormer@wsdot.wa.gov](mailto:stormer@wsdot.wa.gov)  
Judy Johnson, [JohnsJu@wsdot.wa.gov](mailto:JohnsJu@wsdot.wa.gov)

Lummi Nation Natural Resources  
Merle Jefferson, Sr. via email - [merlej@lummi-nsn.gov](mailto:merlej@lummi-nsn.gov)  
Tamela Smart - [tamelas@lummi-nsn.gov](mailto:tamelas@lummi-nsn.gov)

Nooksack Indian Tribe  
George Swanaset, JR via email - [george.swanasetjr@nooksack-nsn.gov](mailto:george.swanasetjr@nooksack-nsn.gov)  
Trevor Delgado via email - [tdelgado@nooksack-nsn.gov](mailto:tdelgado@nooksack-nsn.gov)

Skagit River System Cooperative  
Nora Kammer via email – [nkammer@skagitcoop.org](mailto:nkammer@skagitcoop.org)

WCFD #19 - Glacier  
Fire Chief Ben Thompson via email - [ben@morewoohoo.org](mailto:ben@morewoohoo.org)

Applicant  
Ali Taysi via email - [ali@avtplanning.com](mailto:ali@avtplanning.com)  
[Arch@westford.co](mailto:Arch@westford.co)

Other and/or Parties of Record  
National Forest Service, Mt. Baker Snoqualmie National Forest c/o Greta Smith via email - [gretchen.v.smith@usda.gov](mailto:gretchen.v.smith@usda.gov)

## WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES STAFF REPORT

### **I. OVERVIEW**

**File #** PLN2020-00004

**File Name:** RF - Nooksack Falls.

**Applicant:** Ali Taysi/ AVT Consulting

**Owner:** Excelsior Properties LLC & Excelsior Properties II LLC

**Summary of Request:** Remove the Nooksack Falls Area Exclave properties (3 tax parcels) from their current Mineral Resource Land (MRL) Comprehensive Plan designation, retaining the underlying Rural Forestry (RF) zoning designation. Add language to WCC 20.42.155 ( RF conditional uses) to include the Nooksack Falls Area Exclave

**Location:** The site is located on Wells Creek Road, off Mt Baker Highway (SR 542), roughly 7 miles east of the town of Glacier. Assessor's Parcel #'s 400831580150, 400831450200, 390806550550

**Use of Subject Site:** Presently used for recreation activities, including visiting Nooksack Falls, hiking, picnicking, wildlife viewing, etc. The property is also developed with a power generation facility, associated outbuildings and infrastructure, and a single-family residence.

**Use of Surrounding Properties:** Rural Forestry and Mount Baker-Snoqualmie National Forest

### **II. BACKGROUND**

The subject property exists as an exclave within the M. Baker-Snoqualmie National Forest. Pursuant to the Planning Enabling Act (RCW 36.70.790) Whatcom County adopted an Interim Zoning Ordinance in July 1972 which included this exclave, as well as other fee lands within the National Forest, Wilderness and Recreation areas. The Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established Comprehensive Plan Designations and Title 20 Zoning for these fee lands within the Mt. Baker Snoqualmie National Forest. The subject exclave received a Comprehensive Plan Designation of Mineral Resource Lands (MRL) and an underlying Rural Forestry (RF) zoning designation.



In the early 1900's, mining and hydroelectric power were the primary uses of the subject property. However, mining activities in this area ceased over 50 years ago and there is no mining on or near the property, as the applicant states that mining is no longer feasible at the site due to economic, environmental, topographic and other factors. Meanwhile, Nooksack Falls has attracted increasing numbers of visitors given its proximity to other recreational destinations. The proposed Comprehensive Plan and Zoning Code text amendments are in response to these changed circumstances.

### **III. ANALYSIS OF THE PROPOSED COMPREHENSIVE PLAN AMENDMENT**

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that all of the following criteria are satisfied in order to approve the proposed Comprehensive Plan amendments.

- A. That the amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.**

#### **Growth Management Act**

The Growth Management Act (GMA) includes a planning goal to “Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses” (RCW 36.70A.020(8)). Additionally, the GMA required counties to designate mineral resource lands that have long-term significance for extraction of minerals and adopt regulations to assure conservation of these mineral resource lands (RCW 36.70A.170 and 36.70A.060).

Staff Comment: Consistent with WAC 365-190-070, Mineral Resource Land designation criteria were adopted as part of the Whatcom County Comprehensive Plan. As detailed below through review for consistency with the Whatcom County Comprehensive Plan, the subject site does not meet the designation criteria necessary for designation as mineral resource lands of long-term commercial significance.

Furthermore, WAC 365-190-040(5)(e) states: "Mineral resource lands especially should be designated as close as possible to their likely end use areas, to avoid losing access to those valuable minerals by development , and to minimize the costs of production and transport. It is expected that Mineral Resource Lands will be depleted of minerals over time, and that subsequent land uses may occur on these lands after mining is complete." Mining on the site has not occurred within the past 50 years, as it is not economically feasible. Consistent with WAC 365-190-040(5)(e), a change of designation from Mineral Resource Lands to Rural Forestry is appropriate.

### Whatcom County Comprehensive Plan

The Comprehensive Plan contains twenty specific criteria for designating MRLs (17 applicable to non-metallic mineral deposits and 3 applicable to metallic and industrial mineral deposits). These designation criteria, along with other applicable goals and policies, are set forth in italics and addressed below.

This application is a request to de-designate Mineral Resource Lands. While Whatcom County has designation criteria, there are not de-designation criteria. Without de-designation criteria, the County took the position that just as a proposal must meet all the criteria for designation as mineral resource lands of long-term commercial significance, if the proposal does not meet all the criteria, it is appropriate for de-designation.

1. *Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation.*

Staff Comment: It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material. The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that ~ 15 acres (over multiple mining areas) might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of ~40-45 feet with shear vertical walls in order to meet this volume threshold. Staff does not believe this designation criteria could feasibly be met given the known and unknown constraints.

2. *Minimum MRL Designation size is twenty acres.*

Staff Comment: The present MRL is greater than 20 acres. Therefore, staff finds that this designation criterion has been met.

3. *Expansion of an existing MRL does not need to meet criteria 1 or 2.*

Staff Comment: The proposal is not for expansion of an existing MRL. This criterion is not applicable.

4. *MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations.*

Staff Comment: The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.

5. *All pre-existing legal permitted sites meeting the above criteria will be designated.*

Staff Comment: The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

6. *The site shall have a proven resource that meets the following criteria:*

- *Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.*
- *Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).*

Staff Comment: The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

7. *MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.*

Staff Comment: The subject site is zoned Rural Forestry and is surrounded by Mt. Baker-Snoqualmie Nation Forest. Therefore, staff finds that this designation criterion has been met.

8. *MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the county, water purveyor, and applicant; provided, if agreement cannot be reached the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the county and water purveyor.*

Staff Comment: The subject site is not located within a designated wellhead protection area

of any public water system. Therefore, staff finds that this designation criterion has been met.

9. *MRL Designation should not enclose by more than 50% non-designated parcels.*

Staff Comment: There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

10. *Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives.*

Staff Comment: Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.

11. *MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan.*

Staff Comment: Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.

12. *Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations.*

Staff Comment: The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.

13. *Criterion 13 is specific to designated urban and rural areas, and therefore not applicable.*

The Comprehensive Plan contains an additional criterion for designated forestry areas.

14. *Must demonstrate higher value as mineral resource than forestry resource based upon:*
- *soil conditions*
  - *quality of mineral resource*
  - *sustainable productivity of forest resource*

Staff Comment: It has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.

- 15 *Criterion 15 is specific to designated agricultural areas, and therefore does not apply.*
- 16 *Criterion 16 is specific to river and stream gravel, and therefore does not apply.*
- 17 *Criterion 17 is specific to river and stream gravel, and therefore does not apply.*
18. *For metallic and rare minerals, mineral designation status extends to all patented mining claims.*

Staff Comment: The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion has been met.

19. *Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance.*

Staff Comment: The site does not contain industrial minerals. This criterion is not applicable.

20. *All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria, numbers 6 through 15, as applicable.*

Staff Comment: The site was designated MRL as a result of patented mining claims. This criterion is not applicable.

In addition to the designation criteria, there are Comprehensive Plan policies and goals within Chapter 8 – Natural Resources that apply to the subject application:

*Policy 8G-2: Provide appropriate land use regulation for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.*

Staff Report: Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the Comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

*Policy 8R-6: Consider removal of land from Mineral Resource Designation after mining and subsequent reclamation is completed.*

Staff Comment: Mining has not occurred on the site in more than 50 years, as it is no longer feasible due to economic, environmental, topographic and other factors. Mining predates adoption of the Washington State Surface Mining Act, therefore reclamation of the site is not

required and is likely infeasible to require beyond what may have been required through the Federal regulatory process. Consideration of removal of the MRL designation appears to be supported by this policy.

#### County-Wide Planning Policies

Staff Comment: Staff did not identify County-Wide Planning Policies that would be applicable to a change in Comprehensive Plan Designation from MRL to RF.

#### Interlocal Agreement

Staff Comment: Staff is not aware of any interlocal agreements affecting the subject site.

#### **B. That further studies made or accepted by the department of planning and development services indicate changed conditions that show the need for the amendment.**

The subject site was identified for designation as Mineral Resource Lands through a 1972 Interim Zoning Ordinance due to historic mining operations. This Interim Zoning Ordinance was extended repeatedly until Ordinance 99-013 established the Comprehensive Plan Designations and Title 20 Zoning of the site. Today, mining is no longer feasible within the designated Nooksack Falls Mineral Resource Land Exclave due to economic, environmental, topographic and other factors. This proposed amendment is in response to these changed conditions.

#### **C. That the public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:**

- 1. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.**

Staff Comment: If approved, there would be no effect upon the rate or distribution of population growth beyond what is presently allowed. If approved, the zoning code would provide the opportunity for future uses such as an educational center, cafe, lodging structures, and other improvements related to access and safety to Nooksack Falls

- 2. The anticipated effect upon the ability of the County and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.**

Staff Comment: The subject site is an exclave within the Mt. Baker-Snoqualmie National Forest. There is no anticipated effect upon the ability of the county and/or other service providers, such as cities, schools, water purveyors, sewer purveyors, fire districts, and

others as applicable, to provide adequate services and public facilities including transportation facilities.

**3. Anticipated impact upon designated agricultural, forest and mineral resource lands.**

Staff Comment: There is no anticipated impact upon designated forestlands or mineral resource lands as a result of the change in designation from MRL to RF. The site is presently, and would continue to be, regulated through the Rural Forestry section of the Whatcom County Zoning Code. The site is presently designated as Mineral Resource Lands of long-term commercial significance, however due to site constraints, the site does not appear to have proven and extractable mineral resources of long-term commercial significance.

**D. That the amendment does not include nor facilitate illegal spot zoning.**

According to the Official Whatcom County Zoning Ordinance:

“Illegal spot zoning” means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).

In 1997, the Washington Supreme Court, in the case of *Citizens for Mount Vernon v. The City of Mount Vernon* (133 Wn.2d 861) indicated “. . . Spot zoning is a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan . . .”

Staff Comment: The proposal does not appear to include nor facilitate illegal spot zoning. Rather than singling out a smaller area from a larger area for designation that is different from, and inconsistent with, the classification of surrounding land, the proposal appears to correct a previous designation that was inconsistent with surrounding land uses. The result of the proposal would be a Rural Forestry designation that is surrounded by the Mount Baker Snoqualmie National Forest (MBSNF), rather than the present Mineral Resource Land designation surrounded by the MBSNF.

**IV. ANALYSIS OF THE PROPOSED ZONING CODE AMENDMENT**

Pursuant to Whatcom County Code (WCC) 22.10.060, the Planning Commission and County Council must find that the amendment is consistent with the Comprehensive Plan in order to approve the proposed amendment to the development regulations

Policy 8G-8: Review Title 20.42 (Rural Forestry) and 20.43 (Commercial Forestry) for

opportunities to provide compatible non-forest uses that encourage forest landowners to keep their land in productive forest uses.

Staff Comment: The proposed amendment to Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone.

Policy 2L-4: Support the rural economic base by permitting natural resource based industries, cottage industries, forestry, fishing and agriculture in rural areas, as well as commercial and industrial activity contained within designated Rural Communities.

Staff Comment: The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for a conditional use permit for "The operation of facilities intended to provide education related to forestry, natural resources and wildlife and the purpose..." of the Rural Forestry zone. These facilities would add to the economic base of eastern Whatcom County, through initial development and ongoing operations.

Policy 2FF-4: Allow home-based occupations, cottage industries and small-scale tourist and recreational uses throughout the rural area provided they do not adversely affect the surrounding residential uses, agricultural uses, forestry uses, or rural character.

Staff Comment: The proposed amendment to the Whatcom County Zoning Code would allow the landowners to apply for an educational center, cafe, lodging structures and other improvement related to access and safety of a popular tourist attraction.

## **V. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1. An application for comprehensive plan map amendment and zoning code amendment was received by Whatcom County on December 31, 2019.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on April 23, 2021. The associated comment period ended May 7, 2021. The associated appeal period ended May 17, 2021
3. On April 26, 2021, a comment was submitted by the Lummi Nation, as an affected tribe, requesting that consultation be conducted. Consultation did not occur.
4. Notice of the Planning Commission hearing was posted at the subject site on June 22, 2021.
5. Notice of the Planning Commission hearing was mailed to surrounding property owners within 2,000' of the subject parcel on June 11, 2021.



6. Notice of the Planning Commission hearing was published in the Bellingham Herald on June 25, 2021.
7. Notice of the proposed amendment was sent to the Department of Commerce on May 25, 2021.
8. On May 25, 2011 the Department of Commerce acknowledged receipt of the notice, and that a copy of the notice had been forwarded to other state agencies.
9. The Whatcom County Comprehensive Plan does not contain specific criteria for designating Mineral Resource Lands.
10. The Whatcom County Comprehensive Plan contains specific criteria for designating Mineral Resource Lands.
11. The subject site does not meet Designation Criteria for Mineral Resource Lands of long term commercial significance.
12. Mineral resource designation criterion #1 states "Non-metallic deposits must contain at least one million cubic yards of proven and extractable sand, gravel, or rock material per new MRL Designation." The site is highly constrained by its parcel configuration, hydroelectric power-plant infrastructure, a single family residence, the Mt. Baker Highway, a national forest road, the North Fork of the Nooksack River (Shoreline Designation), and Wells Creek (Shoreline Designation). Staff estimates that roughly 15 acres, over multiple mining areas, might be able to be mined while avoiding these constraints. These 15 acres would require mining to a depth of 40-45 feet with sheer vertical walls in order to meet this volume threshold. It has not been demonstrated that the bedrock deposit contains one million cubic yards of proven and extractable material, therefore it has not been demonstrated that this designation criterion has been met.
13. Mineral resource designation criterion #2 states "Minimum MRL Designation size is twenty acres." The present MRL is greater than twenty acres. Therefore, staff finds that this designation criterion has been met.
14. Mineral resource designation criterion #3 states "Expansion of an existing MRL does not need to meet criteria 1 or 2." The proposal is not for expansion of an existing MRL. This criterion is not applicable.
15. Mineral resource designation criterion # 4 states "MRL Designation status does not apply to surface mines permitted as an accessory or conditional use for the purpose of enhancing agriculture or facilitating forestry resource operations." The subject site does not contain a surface mine permitted for agricultural or forestry operations. This criterion is not applicable.
16. Mineral resource designation criterion #5 states "All pre-existing legal permitted sites

meeting the above criteria (criteria 1-4) will be designated.” The subject site does not contain a pre-existing legal permit for bedrock extraction. This criterion is not applicable.

17. Mineral resource designation criterion #6 states “The site shall have a proven resource that meets the following criteria:
- Construction material must meet WSDOT Standard Specifications for common borrow criteria for road, bridge and municipal construction, or Whatcom County standards for other uses.
  - Sand and gravel deposits must have a net to gross ratio greater than 80% (1290 cy/acre/foot).”

The subject proposal affects a bedrock unit that would be unlikely to meet either of these criteria, unless it was crushed and processed. This criterion appears to be written for a sand and gravel deposit that meets these requirements in-situ. A bedrock unit would not meet the requirements in-situ. Therefore staff finds that this designation criterion has not been met.

18. Mineral resource designation criterion #7 states “MRL Designations must not be within nor abut developed residential zones or subdivisions platted at urban densities.” The subject site is zoned Rural Forestry and is surrounded by the Mount Baker Snoqualmie National Forest. Therefore, staff finds that this designation criterion has been met.

19. Mineral resource designation criterion #8 states “MRL Designations must not occur within the 10 year zone of contribution for designated wellhead protection areas, as approved by the State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems, in accordance with source control provisions of the regulations on water system comprehensive planning. MRL designations may be modified if a wellhead protection area delineated subsequent to MRL designation encompasses areas within a designated MRL. If a fixed radii method is used to delineate a wellhead protection area, the applicant may elect to more precisely delineate the wellhead protection boundary using an analytical model; provided, that the delineated boundary proposed by the applicant is prepared by a professional hydrogeologist; and further provided, that the delineated boundary has been reviewed and approved by the Washington State Department of Health for Group A systems, and by the Whatcom County Health Department for Group B systems. The hydrogeologist shall be selected by mutual agreement of the County, water purveyor, and applicant; provided, if agreement cannot be reached, the applicant shall select a consultant from a list of no less than three qualified consultants supplied by the County and water purveyor.” The subject site is not located within a designated wellhead protection area of any public water system. Therefore, staff finds that this designation criterion has been met.

20. Mineral resource designation criterion #9 states “MRL Designation should not enclose by more than 50% non-designated parcels.” There are no neighboring parcels. The property is surrounded by National Forest Land. Therefore, staff finds that this designation criterion has been met.

21. Mineral resource designation criterion #10 states: "Site-specific MRL designations shall only be approved after mineral extraction impacts have been anticipated and evaluated, and potential adverse environmental impacts have been addressed through appropriate mitigation and/or reasonable alternatives." Mineral extraction impacts have not been anticipated and evaluated, and potential adverse environmental impacts have not been addressed. Therefore, staff finds that this designation criterion has not been met.
22. Mineral resource designation criterion #11 states "MRL Designations must be reviewed for internal consistency with other parts of the comprehensive plan so that the MRL designation does not preclude achievement of other parts of the comprehensive plan." Consistent with RCW 36.70A.320(1), the present designation is presumed valid and does not preclude achievement of other parts of the comprehensive plan. Therefore, staff finds that this designation criterion has been met.
23. Mineral resource designation criterion #12 states "Expansion of MRL Designations to parcels contiguous to, and held by more than 1% common beneficial ownership or beneficial interest with an existing mine is allowed, but before extraction of the additional area may commence the existing mine must be in complete compliance with all operating permits and regulations." The proposed amendment is not an expansion of an MRL designation. This criterion is not applicable.
24. Mineral resource designation criterion #13 is specific to designated urban and rural areas, and therefore not applicable.
25. Mineral resource designation criterion #14 states "Must demonstrate higher value as mineral resource than forestry resource based upon.
  - soil conditions
  - quality of mineral resource
  - sustainable productivity of forest resourceIt has not been demonstrated that the site has a higher value as a mineral resource than a forestry resource. Soil data for the site is not available through the NRCS Web Soil Survey. Therefore, staff finds that this designation criterion has not been met.
26. Mineral resource designation criterion #15 is specific to designated agricultural areas, and therefore is not applicable.
27. Mineral resource designation criterion #16 is specific to river and stream gravel, and therefore is not applicable.
28. Mineral resource designation criterion #17 is specific to river and stream gravel, and therefore is not applicable.
29. Mineral resource designation criterion #18 states "For metallic and rare minerals, mineral designation status extends to all patented mining claims." The site was designated MRL as a result of patented mining claims. Therefore, staff finds that this designation criterion

has been met.

30. Mineral resource designation criterion #19 states "Mineral Resource Designation status extends to all currently permitted industrial mineral deposits of long-term commercial significance." The site does not contain industrial minerals, therefore this criterion is not applicable.
31. Mineral resource designation criterion #20 states "All other non-patented mineral deposits must meet the non-metallic MRL Designation criteria numbers 6 through 15, as applicable." The site was designated MRL as a result of patented mining claims, therefore this criterion is not applicable.
32. In addition to the criteria for designating MRLs, the Whatcom County Comprehensive Plan contains goals and policies that are applicable to the proposal.
33. Policy 8G-2: Provide appropriate land use regulations for the diverse forest resource lands within the county through the designation of Rural Forestry and Commercial Forestry zones.

Land use regulations for the property are administered by the Whatcom County Zoning Code, specifically the Rural Forestry Zoning District. Presently the comprehensive Plan designation of Mineral Resource Lands (MRL) is not consistent with the zoning designation of Rural Forestry (RF), leading to unpredictability and inconsistency during review of discretionary permits. Amending the Comprehensive Plan designation from MRL to RF to match the zoning district is appropriate. Consideration of changing the MRL designation to RF appears to be supported by this policy.

## **VI. PROPOSED CONCLUSION**

The subject amendment is consistent with the approval criteria of WCC 22.10.060.

## **VII. RECOMMENDATION**

Staff recommends approval of the proposed comprehensive plan map amendment and zoning text amendment.

### **ATTACHMENTS:**

- Draft Ordinance
- Exhibit A - Proposed Comprehensive Plan Map Amendment
- Exhibit B - Proposed Zoning Code Amendment
- Exhibit C - Determination of Non-Significance (DNS) issued April 23, 2021 and Distribution List



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-083

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<b>File ID:</b>	AB2022-083	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/27/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

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

Ordinance amending Ordinance No. 2021-064 (Review of Response to COVID-19 Pandemic) to change project timeline

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

Ordinance amending Ordinance No. 2021-064 (Review of Response to COVID-19 Pandemic) to change project timeline for the report delivery by September 30, 2022

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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, Project Schedule

**ORDINANCE NO. \_\_\_\_\_**

**AMENDING ORDINANCE NO. 2021-064 (REVIEW OF RESPONSE TO COVID-19  
PANDEMIC) TO CHANGE PROJECT TIMELINE**

**WHEREAS** on July 13, 2021, Whatcom County Council adopted Ordinance No. 2021-045 to establish an independent review of the community response to the COVID-19 Pandemic; and

**WHEREAS** on October 12, 2021, Whatcom County Council adopted Ordinance 2021-064 amending Ordinance 2021-045 to revise consultant details and project timeline; and

**WHEREAS**, on January 11, 2022, Whatcom County Council authorized a contract with BERK Consulting to complete the project; and

**WHEREAS**, on January 27, 2022, the project team held a kick off meeting and identified further revisions to the project timeline, extending the report delivery date.

**NOW, THEREFORE, BE IT ORDAINED** that Ordinance No. 2021-064 is hereby amended to revise the report delivery date to September 30, 2022.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**ATTEST:**

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**

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

\_\_\_\_\_  
Todd Donovan, Council Chair

**APPROVED AS TO FORM:**

**WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON**

Karen Frakes (by email 2/1/2022)

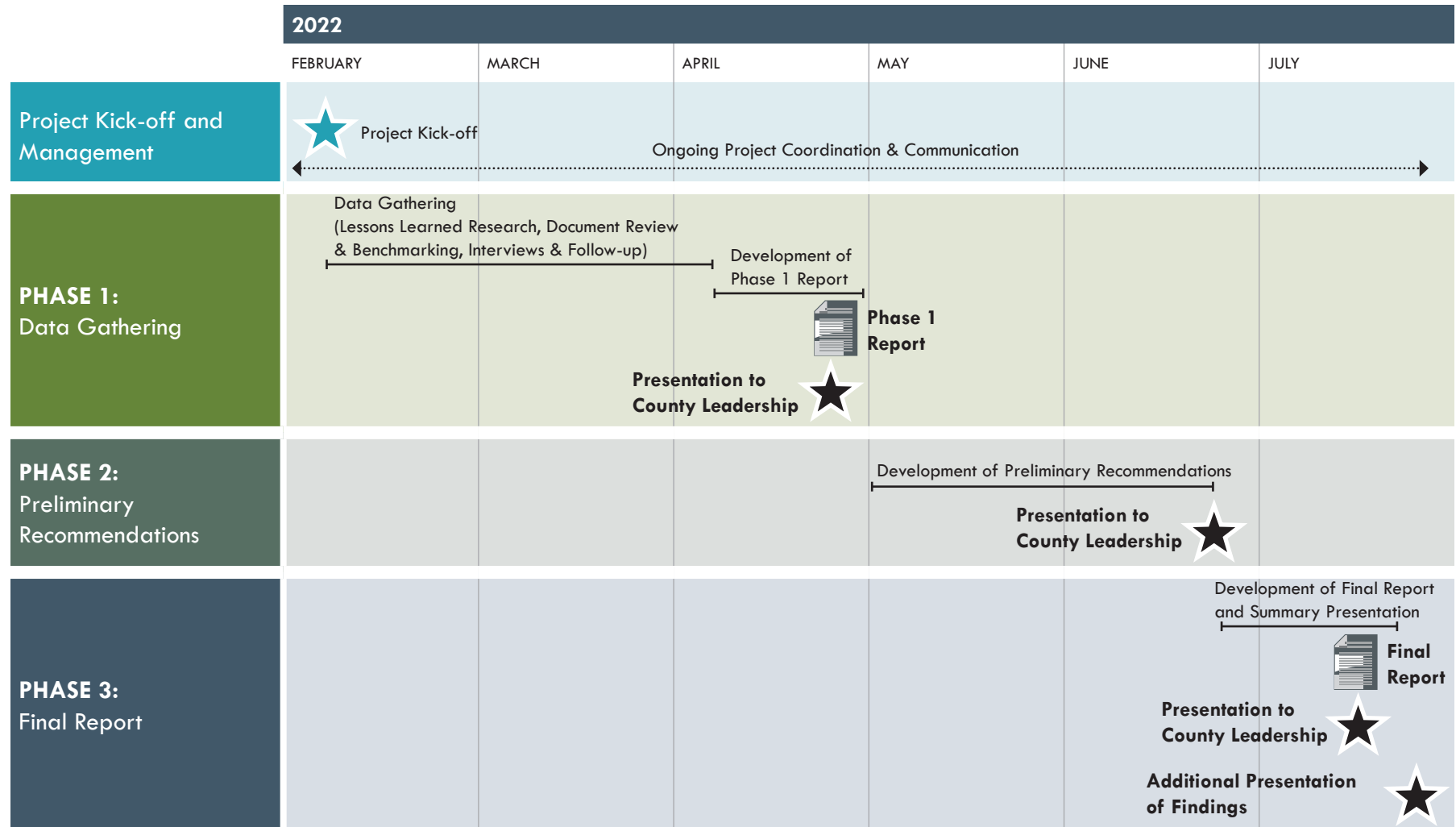
\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Singh Sidhu, County Executive  
( ) Approved ( ) Denied

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

# Schedule

- This draft showing original 6-month schedule updated for February start





# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-086

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<b>File ID:</b>	AB2022-086	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

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

Ordinance amending the 2022 Whatcom County Budget, request no. 5, in the amount of \$7,750,231

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

Supplemental #5 requests funding from the General Fund:

1. To appropriate \$473,000 in Health to fund COVID isolation services from grant proceeds.
2. To appropriate \$286,460 in Non Departmental to fund transfer to Emergency Management for temp extra help for flood recovery.
3. To appropriate \$75,000 in Non Departmental to fund WWU Longhouse construction from historic preservation restricted funding.
4. To appropriate \$60,000 in Planning & Development Services to fund Cascadia Law Group contract amendment to continue to address SEPA issue.
5. To appropriate \$164,182 in Prosecuting Attorney to fund transfer to Behavioral Health Fund in support of LEAD positions from Health Care Authority grant proceeds.
6. To appropriate \$5,000 in Sheriff to fund participation in Organized Crime Drug Enforcement Task Forces from grant proceeds.
7. To appropriate \$45,000 in Sheriff to fund body worn cameras and interview room cameras.
8. To appropriate \$405,600 in Sheriff to fund FY20 Operation Stonegarden program from grant proceeds.
9. To appropriate \$69,884 in Sheriff to fund less lethal equipment from Department of Commerce grant proceeds.

From the Whatcom County Jail Fund:



10. To appropriate \$156,342 to fund increase in cost of Jail physician services.

11. To appropriate \$97,200 fund increased Jail psychiatric services.

12. To appropriate \$50,000 to fund Kittitas County Jail beds.

From the Behavioral Health Programs Fund:

13. To appropriate \$1,121,094 in Health to fund 14 FTEs for Response Division GRACE & LEAD programs.

From the Countywide Emergency Medical Services Fund:

14. To appropriate \$14,576 to fund increase in Stryker equipment lease contract.

15. To appropriate \$150,000 to partially fund Lynden Station 75 renovations for 5th medic unit implementation.

From the Convention Center Fund:

16. To appropriate \$95,000 to fund tourism economic recovery and revitalization program.

From the Emergency Management Fund:

17. To appropriate \$25,325 to fund Emergency Management Performance Grant - American Rescue Plan Act grant program.

18. To reappropriate \$500,000 to fund November flood debris management.

19. To appropriate \$286,460 to fund temp extra help for flood recovery from General Fund transfer.

20. To appropriate \$1,424,900 to fund flood recovery housing costs from state grant proceeds.

21. To appropriate \$230,208 to fund flood recovery manager and case management services from state grant proceeds.

From the Public Utilities Improvement Fund:

22. To appropriate \$2,000,000 to partially fund Port of Bellingham rural broadband project.

From the Administrative Services Fund:

23. To appropriate \$15,000 in AS-Facilities to fund Central Shop server room AC replacement.

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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, Budget summary, Supplemental requests

**ORDINANCE NO.  
AMENDMENT NO. 5 OF THE 2022 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 2022 budget included therein:

<b>Fund</b>	<b>Expenditures</b>	<b>Revenues</b>	<b>Net Effect</b>
<b>General Fund</b>			
Health	473,000	(473,000)	-
Non Departmental	361,460	-	361,460
Planning & Development Services	60,000	-	60,000
Prosecuting Attorney	164,182	(164,182)	-
Sheriff	525,484	(480,484)	45,000
<b>Total General Fund</b>	<b>1,584,126</b>	<b>(1,117,666)</b>	<b>466,460</b>
<b>Whatcom County Jail Fund</b>	<b>303,542</b>	<b>-</b>	<b>303,542</b>
<b>Behavioral Health Programs Fund</b>	<b>1,121,094</b>	<b>(464,182)</b>	<b>656,912</b>
<b>Countywide Emergency Medical Services Fund</b>	<b>164,576</b>	<b>-</b>	<b>164,576</b>
<b>Convention Center Fund</b>	<b>95,000</b>	<b>-</b>	<b>95,000</b>
<b>Emergency Management Fund</b>	<b>2,466,893</b>	<b>(1,966,893)</b>	<b>500,000</b>
<b>Public Utilities Improvement Fund</b>	<b>2,000,000</b>	<b>-</b>	<b>2,000,000</b>
<b>Administrative Services Fund</b>	<b>15,000</b>	<b>-</b>	<b>15,000</b>
<b>Total Supplemental</b>	<b>7,750,231</b>	<b>(3,548,741)</b>	<b>4,201,490</b>

**BE IT FURTHER ORDAINED** by the Whatcom County Council that Exhibit C – Position Control Changes in the 2021-2022 Budget Ordinance should also be amended to provide for the following FTE changes in Health for the LEAD and GRACE programs:

- Add 2 FTE Division Supervisors
- Add 10 FTE Behavioral Health Specialists
- Add 1 FTE Advanced Registered Nurse Practitioner
- Add 1 FTE Account Clerk IV

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

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Chair of Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

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

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

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

<b>WHATCOM COUNTY</b>				
<b>Summary of the 2022 Supplemental Budget Ordinance No. 5</b>				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
<b>General Fund</b>				
Health	To fund COVID isolation services from FEMA grant proceeds.	473,000	(473,000)	-
Non Departmental	To fund transfer to Emergency Management for temp extra help for flood recovery.	286,460	-	286,460
Non Departmental	To fund WWU Longhouse construction from historic preservation restricted funding.	75,000	-	75,000
Planning & Development Services	To fund Cascadia Law Group contract amendment to continue to address SEPA issue.	60,000	-	60,000
Prosecuting Attorney	To fund transfer to Behavioral Health Fund in support of LEAD positions from Health Care Authority grant proceeds.	164,182	(164,182)	-
Sheriff	To fund participation in Organized Crime Drug Enforcement Task Forces from grant proceeds.	5,000	(5,000)	-
Sheriff	To fund body worn cameras and interview room cameras.	45,000	-	45,000
Sheriff	To fund FY20 Operation Stonegarden program from grant proceeds.	405,600	(405,600)	-
Sheriff	To fund less lethal equipment from Department of Commerce grant proceeds.	69,884	(69,884)	-
<b>Total General Fund</b>		<b>1,584,126</b>	<b>(1,117,666)</b>	<b>466,460</b>
<b>Whatcom County Jail Fund</b>				
Sheriff - Corrections	To fund increase in cost of Jail physician services.	156,342	-	156,342
Sheriff - Corrections	To fund increased Jail psychiatric services.	97,200	-	97,200
Sheriff - Corrections	To fund Kittitas County Jail beds	50,000	-	50,000
<b>Total Whatcom County Jail Fund</b>		<b>303,542</b>	<b>-</b>	<b>303,542</b>
<b>Behavioral Health Programs Fund</b>	To fund 14 FTEs for new Response Division GRACE & LEAD programs.	<b>1,121,094</b>	<b>(464,182)</b>	<b>656,912</b>
<b>Countywide Emergency Medical Services Fund</b>				
Non Departmental	To fund increase in Stryker equipment lease contract.	14,576	-	14,576
Non Departmental	To partially fund Lynden Station 75 renovations for 5th medic unit implementation.	150,000	-	150,000
<b>Total Countywide Emergency Medical Services Fund</b>		<b>164,576</b>	<b>-</b>	<b>164,576</b>
<b>Convention Center Fund</b>	To fund tourism economic recovery and revitalization program.	<b>95,000</b>	<b>-</b>	<b>95,000</b>
<b>Emergency Management Fund</b>				
Sheriff - Emergency Management	To fund Emergency Management Performance Grant American Rescue Plan act grant program.	25,325	(25,325)	-
Sheriff - Emergency Management	To reappropriate funding for November Flood debris management.	500,000	-	500,000
Sheriff - Emergency Management	To fund temp extra help for flood recovery from General Fund transfer.	286,460	(286,460)	-
Sheriff - Emergency Management	To fund flood recovery housing costs from grant proceeds.	1,424,900	(1,424,900)	-
Sheriff - Emergency Management	To fund flood recovery manager and case management services from grant proceeds.	230,208	(230,208)	-
<b>Total Emergency Management Fund</b>		<b>2,466,893</b>	<b>(1,966,893)</b>	<b>500,000</b>
<b>Public Utilities Improvement Fund</b>	To partially fund Port of Bellingham rural broadband project.	<b>2,000,000</b>	<b>-</b>	<b>2,000,000</b>
<b>Administrative Services Fund</b>	To fund Central Shop server room AC replacement.	<b>15,000</b>	<b>-</b>	<b>15,000</b>
<b>Total Supplemental</b>		<b>7,750,231</b>	<b>(3,548,741)</b>	<b>4,201,490</b>

## Supplemental Budget Request

**Health**

**Communicable Disease & Epidemiology**

Suppl ID # 3583

**Fund 1**

**Cost Center 660460**

**Originator: Cindy Hollinsworth**

**Expenditure Type: One-Time**

**Year 2 2022**

**Add'l FTE ☐**

**Add'l Space ☐**

**Priority 1**

**Name of Request: FEMA Funding for COVID Isolation Services 2022**

**X**

*Kathleen Roy Con behalf of Erika Lautenbach, Director*

*1/24/22*

**Department Head Signature (Required on Hard Copy Submission)**

**Date**

Costs:	Object	Object Description	Amount Requested
	4333.9703	FEMA-Public Assistance	(\$473,000)
	6610	Contractual Services	\$473,000
	<b>Request Total</b>		<b>\$0</b>

**1a. Description of request:**

The Health Department is requesting expenditure authority for FEMA funding available to support operations for an overflow Whatcom County Isolation Facility due to the Omicron surge. This funding will support supplies, food, contracted staffing for daily operations at the site, cleaning and security services. Operational expenses are estimated to be a \$300,000 monthly through Feb 28, 2022.

**1b. Primary customers:**

Whatcom County residents who have been impacted by the COVID pandemic.

**2. Problem to be solved:**

Some people who are COVID positive do not have an option to isolate in their current living conditions. Public Health Nurses and disease investigation staff monitor needs and barriers among Community Health Assessment-identified vulnerable populations and work with partners to address and refer to the county isolation and quarantine facility. In January 2022, the omicron surge and related outbreaks at congregate supported living housing led to a shortage of beds and the Whatcom County Health Officers determined that there was need to order the stand-up of another facility. Without an additional place to safely isolate, persons are either being discharged to the street or holding beds at the hospital when not medically necessary.

**3a. Options / Advantages:**

Providing a safe and secure facility to isolate people infected reduces the transmission of COVID-19 to others in congregate living situations and the general public. We were only able to work with the city of Bellingham to partner and use a city facility supported by city maintenance employees.

**3b. Cost savings:**

\$473,000 in savings of local funds will be experienced.

**4a. Outcomes:**

Operational funding of the Isolation will be fully funded and people will have a safe and secure facility to reside in while eliminating the transmission of COVID-19.

Slow the spread of the virus within the community and reduce impact on health care infrastructure.

**4b. Measures:**

Sustained operations of the Isolation and Quarantine facility, sustained staffing of the Quarantine and Isolation Response Team at the Health Department.

**5a. Other Departments/Agencies:**

Aristo healthcare  
Pacific Security  
City of Bellingham

Monday, January 24, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

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**Health****Communicable Disease & Epidemiology**

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*Suppl ID # 3583***Fund 1****Cost Center 660460****Originator: Cindy Hollinsworth**

NW Healthcare Linen

MegaWash Laundry &amp; Cleaners

**5b. Name the person in charge of implementation and what they are responsible for:****6. Funding Source:**

FEMA funding

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3590

Fund 1

Cost Center 4530

Originator: M Caldwell

Year 2 2022

Add'l FTE ☐

Priority 1

Name of Request: Trf in support of Temp Extra Help for Flood Rec

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	8351.16700	Operating Transfer Out	\$286,460
	<b>Request Total</b>		<b>\$286,460</b>

### 1a. Description of request:

Companion supplemental to Supplemental ID #3571 Temp Extra Help for Incident 21-4321 Recovery. This is a General Fund transfer to fund 4 temporary extra help positions in Emergency Management for one year to assist with flood recovery efforts.

### 1b. Primary customers:

### 2. Problem to be solved:

### 3a. Options / Advantages:

### 3b. Cost savings:

### 4a. Outcomes:

### 4b. Measures:

### 5a. Other Departments/Agencies:

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

### 6. Funding Source:

General Fund

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3580

Fund 1

Cost Center 4019

Originator: Tawni Helms

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: WWU - Longhouse Construction

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7220	Intergov Subsidies	\$75,000
	Request Total		\$75,000

### 1a. Description of request:

Western Washington University (WWU) is located on the ancestral homelands of the Lhaq'temish Lummi Nation and Nuxwsa7aq, Nooksack Nation and other Coast Salish Nations. In recognition of the historic importance of place and in acknowledgement of the university's responsibility to promote education opportunities for Native students, WWU is building a traditional Coast Salish-style Longhouse for use by students, faculty, staff, and our surrounding communities.

### 1b. Primary customers:

Whatcom County and students, staff and community members.

### 2. Problem to be solved:

The vision for this project originated from the native American Student Union (NASI) and is the result of decades of dialogue amount students, faculty, and campus administrators. The project will help the university with their most important challenge to increase retentionn and persistence rates and the number of graduates, while eliminating opportunity and achievement gaps for students from diverse and under-represented socio-economic background.

### 3a. Options / Advantages:

Whatcom County remains a dedicated partner in supporting projects that achieve a vision of inclusive success.

### 3b. Cost savings:

WWU has successfully raised \$4.5 million for design and construction of the Longhouse. They are seeking additional funds for \$500,000 from other sources to complete the project.

### 4a. Outcomes:

WWU received \$4.5 million for design and construction during the 2021-2023 biennium. Design and construction should begin soon.

### 4b. Measures:

The Longhouse structure will include a gathering hall, indoor and outdoor kitchens, and student lounges. The Longhouse will support Native students by providing a gathering and ceremonial space to promote cultural exchange and understanding.

### 5a. Other Departments/Agencies:

No

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

N/A

### 6. Funding Source:

Historical Preservation Fund



**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius**  
Director

**Memorandum**

DATE: January 19, 2022  
TO: Satpal Sidhu, County Executive  
Tyler Schroeder, Deputy Executive  
FROM: Mark Personius, Director *MP*  
RE: Supplemental Budget Request

---

Attached is a PDS supplemental budget request in the amount of \$60,000. These funds will be used to supplement the current Cascadia Law Group, PLLC contract to provide additional legal advice and representation to the County upon request regarding SEPA compliance (SEP2016-00004) and regulatory requirements pertaining to the Northwest Clean Air Agency (NWCAA) Notice of Violation 4516 issued to PetroGas West LLC.

A corresponding contract amendment for the same amount will be processed concurrently with this supplemental budget request.

Please contact Mark Personius (X5950) if you have any questions.

# Supplemental Budget Request

Status: Pending

Planning & Development Services

Administration

Suppl ID # 3573

Fund 1

Cost Center 800

Originator: Mark Personius

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Cascadia Law Group Contract Amendment Supplemental

X



1-19-22

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$60,000
	<b>Request Total</b>		<b>\$60,000</b>

## 1a. Description of request:

This supplemental is part of a contract amendment request to increase funding for Contract 202111002. The Northwest Clean Air Agency (NWCAA) issued a Notice of Violation 4516 to PetroGas West, LLC alleging violations of air emissions and notified Whatcom County PDS, as the SEPA lead agency, of potentially significant increases in marine vessel and train traffic from operations at the PetroGas Ferndale Terminal from 2016-present that may not have been fully disclosed to the County when PDS issued permits and SEP2016-00004 in 2016. This funding request is to continue the engagement of outside legal counsel to provide legal advice to the County to determine the appropriate SEPA and regulatory compliance process for addressing this issue and bringing the facility into compliance.

## 1b. Primary customers:

Whatcom County PDS, Whatcom County citizens and the NWCAA.

## 2. Problem to be solved:

Whatcom County will need outside legal counsel to address the SEPA and regulatory approval issues and processes this issue requires.

## 3a. Options / Advantages:

County legal staff recommends the County engage outside legal counsel with expertise in these specific matters.

## 3b. Cost savings:

Adequate legal representation can save the County from potential litigation costs.

## 4a. Outcomes:

The County will be prepared and able to address regulatory compliance issues and potential litigation.

## 4b. Measures:

Outside legal counsel will respond and advise the County on regulatory compliance processes and help guide the County through potential legal issues.

## 5a. Other Departments/Agencies:

N/A

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

N/A

## 6. Funding Source:

General Fund

# Supplemental Budget Request

Status: Pending

## Prosecuting Attorney

Suppl ID # 3589

Fund 1

Cost Center 2623

Originator: M Caldwell

Year 2 2022

Add'l FTE ☐

Priority 1

Name of Request: Trf to BH in support of LEAD FTEs

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	4333.9358	HCA LEAD Grant	(\$164,182)
	8351	Operating Transfer Out	\$164,182
	<b>Request Total</b>		<b>\$0</b>

### 1a. Description of request:

Companion supplemental to Health supplemental #3588 New Response Division Positions (GRACE & LEAD) in support of LEAD FTEs being added. The actual amount needed is \$464,182 for Washington Health Care Authority funded FTEs. \$300,000 is already budgeted in the 2022 budget this request will fund the remaining about required.

### 1b. Primary customers:

### 2. Problem to be solved:

### 3a. Options / Advantages:

### 3b. Cost savings:

### 4a. Outcomes:

### 4b. Measures:

### 5a. Other Departments/Agencies:

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

### 6. Funding Source:

HCA grant proceeds

# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3585

Fund 1

Cost Center 1003521005

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 2022 - OCDETF DEA RL-21-0004

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/24/22

Costs:	Object	Object Description	Amount Requested
	4342.1013	Reimb Drug Enforcement	(\$2,500)
	6140	Overtime	\$2,500
	Request Total		\$0

## 1a. Description of request:

The U.S. Department of Justice Drug Enforcement Administration (DEA) authorized funding for the Whatcom County Sheriff's Office to participate in the Organized Crime Drug Enforcement Task Forces (OCDETF) and assist with the investigation and prosecution of major drug trafficking organizations. DEA will reimburse the Sheriff's Office for overtime of deputies engaged in these investigations.

## 1b. Primary customers:

Citizens of Whatcom County

## 2. Problem to be solved:

Budget authority is needed for deputies to participate in this operation.

## 3a. Options / Advantages:

Funds were authorized specifically for overtime on OCDETF investigations. They may not be used for any other purpose.

## 3b. Cost savings:

\$2,500.00

## 4a. Outcomes:

Deputies assigned to assist in OCDETF investigations may perform a variety of duties: interviewing witnesses, conducting surveillance, performing undercover assignments, handling informant and/or prisoner transportation, preparing and executing search and arrest warrants, serving subpoenas, assisting with trial preparation, and testifying at trials.

## 4b. Measures:

## 5a. Other Departments/Agencies:

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

## 6. Funding Source:

The U.S. Department of Justice Drug Enforcement Administration will provide \$2,500.00 from State and Local Overtime (SLOT) Funds.

# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3586

Fund 1

Cost Center 1003521008

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 2022 OCDETF DEA RL-21-0012

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/24/22

Costs:	Object	Object Description	Amount Requested
	4342.1013	Reimb Drug Enforcement	(\$2,500)
	6140	Overtime	\$2,500
	Request Total		\$0

## 1a. Description of request:

The U.S. Department of Justice Drug Enforcement Administration (DEA) authorized funding for the Whatcom County Sheriff's Office to participate in the Organized Crime Drug Enforcement Task Forces (OCDETF) and assist with the investigation and prosecution of major drug trafficking organizations. DEA will reimburse the Sheriff's Office for overtime of deputies engaged in these investigations.

## 1b. Primary customers:

Citizens of Whatcom County

## 2. Problem to be solved:

Budget authority is needed for deputies to participate in this operation.

## 3a. Options / Advantages:

Funds were authorized specifically for overtime on OCDETF investigations. They may not be used for any other purpose.

## 3b. Cost savings:

\$2,500.00

## 4a. Outcomes:

Deputies assigned to assist in OCDETF investigations may perform a variety of duties: interviewing witnesses, conducting surveillance, performing undercover assignments, handling informant and/or prisoner transportation, preparing and executing search and arrest warrants, serving subpoenas, assisting with trial preparation, and testifying at trials.

## 4b. Measures:

## 5a. Other Departments/Agencies:

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

## 6. Funding Source:

The U.S. Department of Justice Drug Enforcement Administration will provide \$2,500.00 from State and Local Overtime (SLOT) Funds.

# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3581

Fund 1

Cost Center 2910

Originator: Rodger Funk

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Body Worn Cameras & Interview Room Cameras - 2022

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6510	Tools & Equip	\$45,000
	<b>Request Total</b>		<b>\$45,000</b>

## 1a. Description of request:

The proposal is to acquire equipment and associated licenses required to outfit two interview rooms at the Sheriff's Office with cameras and microphones to record interviews and interrogations, and an additional 18 body worn cameras. These additions would be through Axon (Evidence.com) and would add to the existing body worn program the Sheriff's Office is currently using.

\$25,000 Additional body worn cameras

\$20,000 Two interview room cameras and microphones

## 1b. Primary customers:

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

## 2. Problem to be solved:

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

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

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

The WCSO needs a minimum of an additional 18 body worn cameras and associated licenses to allow each deputy to wear the device. The estimated yearly cost for these cameras, associated equipment and licenses is \$25,000.

The WCSO interview rooms are currently equipped with a camera system available to detectives. Access to the computer and software to start and manage the recordings is available to detectives only. The system records to local media and requires additional steps to archive and retain the video. The new law has strict lengthy retention requirements for recordings. The system has had functionality issues and is

# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3581

Fund 1

Cost Center 2910

Originator: Rodger Funk

not always available.

The estimated first year cost to implement these cameras for two rooms is \$20,000. The ongoing yearly cost is \$7000. The ongoing cost includes licensing and unlimited cloud storage.

### 3a. Options / Advantages:

The WCSO is currently using Axon body cameras. WCSO previously piloted several different options and Axon was found to be the most appropriate option. The additional cameras are the only ones that would work with the currently used Evidence.com system.

The proposed interview camera system records directly to Evidence.com. Evidence storage is cloud based. The current system is a different vendor requiring the evidence to be retained separately.

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

Using the Axon system would allow all deputies to have access to the system, rather than only detectives. This would reduce delays and improve efficiencies to facilitate custodial interviews in accordance with the recent legislation. The system would be the same system used for the body worn cameras, which are already in use by the Sheriff's Office.

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

### 3b. Cost savings:

The cost savings associated with the acquisition of the axon body cameras and interview rooms are based on compliance with the legislation, reducing liability by having deputies' interactions recorded, and by having the Axon camera already deployed by WCSO, there are already policies and trainings in place.

### 4a. Outcomes:

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

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

### 4b. Measures:

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

### 5a. Other Departments/Agencies:

Yes

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

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

Perry Rice (I.T. Manager).

I.T. will oversee the installation of the interview room technology.

### 6. Funding Source:

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



# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3569

Fund 1

Cost Center 1003512001

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 2022 - Operation Stonegarden FY20

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/24/22

Costs:	Object	Object Description	Amount Requested
	4333.8705	St Homeland Sec Grt Prg	(\$405,600)
	6110	Regular Salaries & Wages	\$12,035
	6140	Overtime	\$86,370
	6210	Retirement	\$5,525
	6230	Social Security	\$7,528
	6259	Worker's Comp-Interfund	\$2,442
	6269	Unemployment-Interfund	\$133
	6410	Fuel	\$8,910
	6790	Travel-Other	\$6,239
	7220	Intergov Subsidies	\$276,418
	<b>Request Total</b>		<b>\$0</b>

## 1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded \$405,600 to Whatcom County for FY20 Operation Stonegarden (OPSG) Grant Program to enhance cooperation and coordination among local, tribal, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States. The Sheriff's Office and other law enforcement agencies in the area will use OPSG funding to provide enhanced patrols to increase law enforcement presence in maritime and land border areas of Whatcom County targeting illicit activity, specifically cross border human trafficking, smuggling, weapons, currency, and narcotics.

The total grant award is \$405,600 with \$129,182 allocated to Whatcom County Sheriff's Office and \$276,418 to sub-recipients. The Sheriff's Office will use its allocation for grant administration, operational overtime, fuel, and mileage costs.

State and local law enforcement agencies are not empowered to enforce immigration laws under the OPSG program.

## 1b. Primary customers:

Area law enforcement agencies and citizens of Whatcom County through increased capability of law enforcement to secure the international border.

## 2. Problem to be solved:

Budget authority is needed to use OPSG FY20 funds in 2022

## 3a. Options / Advantages:

OPSG funds are awarded specifically for projects that improve border security. They cannot be used for any other purpose.



## Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3569

Fund 1

Cost Center 1003512001

Originator: Dawn Pierce

### 3b. Cost savings:

Cost savings of \$129,182 for Whatcom County Sheriff's Office and \$276,418 to other law enforcement agencies (sub-recipients).

### 4a. Outcomes:

Enhanced patrols will be conducted per contract specifications and timelines. Daily Activity Reports will be completed and sent to the Homeland Security.

### 4b. Measures:

The Whatcom County Sheriffs Office and U.S. Border Patrol, Blaine Sector, will monitor projects and expenditures against contract deliverables.

### 5a. Other Departments/Agencies:

Whatcom County agencies participating in FY20 OPSG are: U.S. Border Patrol Blaine Sector, Whatcom County Sheriff's Office, Washington Department of Fish & Wildlife, and the Blaine, Everson, Ferndale, Lynden, and Sumas Police Departments.

Although receiving no OPSG funding, U.S. Border Patrol will provide coordination among participating agencies. Participating agencies receiving OPSG funding will provide enhanced law enforcement presence to reduce criminal activity in border areas.

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

Each participating agency will assign an individual to coordinate the project within their jurisdiction.

### 6. Funding Source:

Indirect federal grant from Washington State Military Department. Funds originate from U.S. Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP) FY2020 OPSG Grant Program, CFDA No. 97.067.

# Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 3564

Fund 1

Cost Center 1003521007

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Dept of Commerce - Less than Lethal Equip Grant

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/24/22

Costs:	Object	Object Description	Amount Requested
	4333.1673	Byrne JAG Grant	(\$69,884)
	6510	Tools & Equip	\$69,884
	Request Total		\$0

## 1a. Description of request:

The Sheriff's Office received a federal grant through the Washington State Department of Commerce to purchase less than lethal equipment, and an Interagency Agreement was executed in November 2021 (Whatcom County Contract #202111029). Equipment authorized in the agreement includes: ballistic shields, Taser7's, Taser holsters, Taser batteries, BolaWraps and BolaWrap cartridges.

## 1b. Primary customers:

Whatcom County Sheriff

## 2. Problem to be solved:

The Sheriff's Office needs budget authority to use grant funds to purchase authorized equipment.

## 3a. Options / Advantages:

Grant funds were awarded to purchase specific equipment itemized and approved by Washington State Department of Commerce. The funds may not be used for any other purpose.

## 3b. Cost savings:

Cost Savings of \$69,884.00

## 4a. Outcomes:

The equipment will be purchased by June 30, 2022 and issued to deputies as soon as possible after acquisition.

## 4b. Measures:

## 5a. Other Departments/Agencies:

N/A

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

N/A

## 6. Funding Source:

Federal pass-through grant funds from State of Washington Department of Commerce.  
Funds originate from U.S. Department of Justice, Edward Byrne Memorial Justice Assistance Grant, CFDA No. 16.738.

# Supplemental Budget Request

Status: Pending

## Jail

Suppl ID # 3565

Fund 118

Cost Center 118160

Originator: Wendy Jones

Expenditure Type: One-Time

Year 2

2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Jail Physician contract

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/07/22

Costs:	Object	Object Description	Amount Requested
	6635.006	Contract Medical Provide	\$156,342
	Request Total		\$156,342

### 1a. Description of request:

This supplemental is to provide funding for the jail Physician Services. Our long time physician retired at the end of 2021, and the contract went out to RFP. There was 1 responsive bidder for the position. The contract was negotiated and resulted in compensation that was in excess of what was originally budgeted during the 2021/22 budget cycle.

### 1b. Primary customers:

Offenders in the Whatcom County Jail and Work Center.

### 2. Problem to be solved:

Corrections facilities are required by State and Federal law to provide health care services to all offenders. The level of care must meet the medical standard of care in the community. This requirement was established in the 1976 legal case Estelle v Gamble where the U.S. Supreme Court found that the 4th, 8th and 14th Amendments to the U.S. Constitution require governments to provide health care to offenders. For at least the past 40 years, one of the ways the jail has met this legal requirement has been through contracting with a local physician and Advanced Registered Nurse Practitioners (ARNP), on a part-time basis.

It can be a challenge to attract qualified health care professionals to Correctional medical positions, especially when the contract position is part-time. When our long-time physician let us know that he was going to retire at the end of 2021, an RFP was created and posted. There was only 1 responsive bidder; Ideal Options. The final amount of the contract for services is significantly higher than we had been paying. The contract includes the following services:

- \* Clinic Services for all in-custody offenders
- \* Ordering and reviewing results of all lab, imaging and off-site medical reports
- \* Entry of all appropriate health care information, including medical orders, into the Jail's EMR system
- \* Coordinate specialty health care
- \* Oversee the Jail's MAT (Medication Assisted Treatment) program for Opioid addiction.
- \* 24/7 on-call services
- \* Provision of Physician coverage for when the primary Physician is not available
- \* Provide additional training for Health care staff
- \* Development and updates to existing medical policies and protocols
- \* Oversee application and maintenance of DEA (Drug Enforcement Administration) licensure for stock controlled substances.

### 3a. Options / Advantages:

This is a service required of all Corrections facilities, and there were no other responsive bidders for this contract. In addition, the selected Practice is uniquely qualified to oversee the jail's MAT program..

Friday, January 07, 2022

Rpt: Rpt Suppl Regular

# Supplemental Budget Request

Status: Pending

## Jail

Suppl ID # 3565

Fund 118

Cost Center 118160

Originator: Wendy Jones

### 3b. Cost savings:

The 2 primary areas where we anticipate costs savings. They are:  
Reduction the in the costs of Opioid substitution medications with the ability to have the medication in stock vs having to order it for a specific offender  
and second, the reduction is risk exposure for the County due to the additional qualifications of the primary physician in the area of Addiction medicine.

### 4a. Outcomes:

There will be the funds available to cover the expense connected to this new contract.

### 4b. Measures:

All expenditures are monitored on a monthly basis and includes a breakdown of the services rendered. In addition, as part of the Jail Health Program's Quality Assurance function, a quarterly review is done to monitor specific areas of health care. This includes items such as lathe wait time to see the Doctor, trips to the Emergency Room, medical errors, complaints on health care services, negative outcomes,, etc.

### 5a. Other Departments/Agencies:

M/A

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

N/A

### 6. Funding Source:

The Jail Sales Tax fund.

# Supplemental Budget Request

Status: Pending

Jail

Suppl ID # 3566

Fund 118

Cost Center 118160

Originator: Wendy Jones

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Jail Psychiatric Services

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/07/22

Costs:	Object	Object Description	Amount Requested
	6635.006	Contract Medical Provide	\$97,200
	Request Total		\$97,200

## 1a. Description of request:

This supplemental is to provide additional funding for Psychiatric Services to offenders at the Whatcom County Jail and Work Center. We are contracting with a new provider who is willing to provide for the additional hours needed to cover evaluation and treatment services for a growing population of Seriously Mentally ill offenders held in custody by the Courts.

## 1b. Primary customers:

Offenders with Serious Mental Illness.

## 2. Problem to be solved:

For the past 5 years we have contracted with Compass Health. They notified us that they would not be submitting a proposal for Mental Health Services starting in 2022, due to difficulty in finding practitioners who were willing to work with the population. Over the years of the contract with Compass, the service hours had been reduced as they were unable to replace providers who had either retired or been reassigned by Compass to other areas of their agency.

In fall of 2021, an RFP was issued for Psychiatric provider services. We received no response to the RFP. Our understanding is that a combination of the population to be served and the great scarcity of qualified providers was the core reason for no response from local agencies. The Health Department Behavioral Health Program Manager reached out to the agency that is now contracting for Mental Health and Re-Entry Services for the Jail and Juvenile Detention to see if they might have the resources to provide a provider with prescriptive authority. That agency, Lifeline Connections, contacted me and indicated they would be able to contract with, and supervise, a provider. Over the course of contract negotiation, it was agreed that given the acuity and number of offenders with Serious Mental Illness, additional hours would be needed to be provided. They did agree to provide the services at the same cost per hour as we were paying our previous provider.

The costs of these services will exceed the \$90,000 that has been allocated over the past 5 years from the Mental Health Sales Tax fund. This supplemental will allocate the additional funds needed to provide an adequate level of service for Offenders with mental illness who have been remanded to Jail by the Courts.

## 3a. Options / Advantages:

We are legally required to provide mental health services for offenders. With no other agencies submitting responses to the RFP, we needed to come to an agreement with Lifeline Connections for a contract. Lifeline could have taken advantage of our position by negotiating for a higher rate of reimbursement, but did not. The sole reason for the increase in the number of hours needed to treat a very acute population.

# Supplemental Budget Request

Status: Pending

## Jail

Suppl ID # 3566

Fund 118

Cost Center 118160

Originator: Wendy Jones

### 3b. Cost savings:

We are unable to quantify a specific cost savings. Being able to have acutely ill offenders see a prescriber quickly increases the chance of stabilizing that individual while they are in custody. As a result, destructive and self-harming behavior is reduced, and the individual can work more closely with their attorney for case resolution and increase their chances of being released to one of the local programs that specialize in the treatment of people with mental illness.

### 4a. Outcomes:

- 1) The current 4 week waiting period for initial assessment and treatment plan for new offenders will be reduced to 72 hours.
- 2) Offenders experiencing an exacerbation of their illness or who are in crisis will be seen within a 24-36 hour timeframe
- 3) Efficacy of a treatment plan will be reviewed within 2-4 weeks of starting a medication. If an offenders is experiencing negative side effects, they will be triage to be seen within the 24-36 timeline.

### 4b. Measures:

As part of the Jail Health Program's quality assurance program, a variety of measures are reviewed on at least a quarterly basis. The wait time to be seen by the provider, once screened by one of the jail's Mental Health Professionals (MHP's) will be included in that review.

### 5a. Other Departments/Agencies:

Health Department and ADS Finance. We will need to modify the procedure for blending the funding resources in such a way that we don't lose the fiscal tracking function, but make the process more efficient.

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

Program Manager Jackie Mitchell for the Health Department and Financial Analyst Marianne Caldwell to make the final determination that the new process will follow ADS Finance policies and State requirements.

### 6. Funding Source:

Jail Sales Tax Fund.

# Supplemental Budget Request

Status: Pending

## Jail

Suppl ID # 3567

Fund 118

Cost Center 118000

Originator: Wendy Jones

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Kittitas County Jail Beds

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/10/22

Costs:	Object	Object Description	Amount Requested
	7210	Intergov Prof Svcs	\$50,000
	Request Total		\$50,000

### 1a. Description of request:

This supplemental is to provide funding for the use of contract jail beds with the Kittitas County Jail. We have renewed our contract in anticipation of being able to use some of the beds later in the year, depending on COVID status.

### 1b. Primary customers:

Misdemeanor offenders under the jurisdiction of Whatcom County District Court or one of our local Municipalities.

### 2. Problem to be solved:

The jail is currently under very strict booking restrictions due to the need to hold beds for the medical quarantining of all incoming offenders, and the repeated shut down of all of our courts for trials, due to COVID. The combined effects of this has been the loss of approximately 48 beds and increases in the length of stay for offenders who have been booked. At some point, we anticipate that we will be able to at least modify, if not eliminate, booking restrictions and the jail population will rapidly rise. The funds we are requesting anticipate a late summer reduction in the statewide COVID cases and the ability to start housing offenders in the Kittitas County jail. In the event we are unable to move offenders, the funds would revert back to the Jail Sales Tax fund.

### 3a. Options / Advantages:

Options:

1) Continue with the same level of booking restrictions in order to control the jail population. This is causing an increasing level of frustration with local law enforcement, Prosecutors, and our contract Municipalities.

2) Lift booking restrictions and resume the high jail populations that have caused liability and security concerns in the past.

Having an "overflow" jail available allows us to more reasonably manage the offenders who are remanded to custody.

### 3b. Cost savings:

A priority for placement in Kittitas would be sentenced misdemeanor offenders being held by one of our Municipal partners. Our contract provides for us to charge our current per diem rate for offenders being held, regardless of where their offenders are housed. Since the per diem charged by Kittitas is less than the per diem for Whatcom, the net per diem will help cover the costs of transport over and back to Kittitas.

### 4a. Outcomes:

We will be able to move and house misdemeanor offenders at the Kittitas County Jail when needed.

### 4b. Measures:

Monday, January 10, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

*Status:* Pending

### Jail

Suppl ID # 3567

**Fund** 118

**Cost Center** 118000

**Originator:** Wendy Jones

Daily jail census by housing location

**5a. Other Departments/Agencies:**

Kittitas County County Corrections. We have already renewed the contract in anticipation of needed to utilized the beds later in the year.

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

N/A

**6. Funding Source:**

Jail Sales Tax Fund



## Supplemental Budget Request

**Health**

**Human Services**

Suppl ID # 3588 Fund 124 Cost Center Originator: Erika Lautenbach

Expenditure Type: One-Time Year 2 2022 Add'l FTE ☒ Add'l Space ☒ Priority 1

**Name of Request:** New Response Division Positions (GRACE & LEAD)

**X**   
 Department Head Signature (Required on Hard Copy Submission)

1/27/22  
 Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$710,676
	6210	Retirement	\$75,250
	6230	Social Security	\$54,367
	6245	Medical Insurance	\$196,119
	6255	Other H&W Benefits	\$19,400
	6259	Worker's Comp-Interfund	\$7,176
	6269	Unemployment-Interfund	\$1,848
	6320	Office & Op Supplies	\$57,000
	6510	Tools & Equip	\$161,000
	6610	Contractual Services	(\$459,109)
	6699	Other Services-Interfund	\$57,000
	6790	Travel-Other	\$44,000
	8301	Operating Transfer In	(\$464,182)
	8351	Operating Transfer Out	\$196,367
	<b>Request Total</b>		<b>\$656,912</b>

### 1a. Description of request:

The Health Department requests position authority for 14 FTEs to transition the GRACE (Ground-level Response and Coordinated Engagement) and LEAD (Law Enforcement Assisted Diversion) programs to the Health Department. These programs will cease operation by the contracted provider after March 31, 2022 and the Health Department will hire and employ GRACE and LEAD staff directly for the remainder of 2022 and beyond. The cost differential between contracting with a community provider and hiring positions directly into county service will be offset by increased Behavioral Health Fund revenue. Increased support from the WA State Healthcare Authority for LEAD is anticipated later in 2022, as well as potential Medicaid fee-for-service revenue.

The positions in this request include 7.5 FTE for GRACE including a supervisor, 5 case managers, an ARNP and part-time admin assistant. These positions are covered by dedicated funding from grants from City of Bellingham, PeaceHealth, NorthSound Behavioral Health Organization and Behavioral Health Funds. Medicaid reimbursement is also anticipated.

This request also includes 6.5 FTE for LEAD for a supervisor, 4 case managers. 1 outreach coordinator and a part-time admin assistant. These positions are funded by dedicated funding from the WA State HealthCare Authority and Behavioral Health Funds with anticipated additional support from a Department of Justice grant.

### 1b. Primary customers:

Thursday, January 27, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

### Health

### Human Services

Suppl ID # 3588

Fund 124

Cost Center

Originator: Erika Lautenbach

GRACE and LEAD programs serve adults who require intensive supports and coordination among providers to ensure stability of general and behavioral health. LEAD program specifically serves persons being diverted from prosecution for low level offences in accordance with state legislation and the Blake decision.

#### **2. Problem to be solved:**

While the GRACE and LEAD programs have been successfully administered by the contracted provider, there is opportunity to significantly expand LEAD and to provide a convening and leadership role in system improvement.

More work is needed on systems transformation with our first responder, healthcare, behavioral health, and criminal justice partners in order to make the overall system more coordinated, responsive, and positioned to meet the varying needs of those served by the appropriate provider. The Health Department, as the 'hub' in the 'hub and spoke' model for GRACE, is uniquely positioned to play this convening and leadership role.

#### **3a. Options / Advantages:**

The Health Department could continue to contract with the existing provider or contract with another community provider. This would meet the operational needs, but would not address the need for systems transformation and improvement work. The Health Department has the advantage of both being able to provide medical and behavioral health clinical oversight and leadership for the operational components of GRACE and LEAD, but is also positioned as the 'hub' to lead the systems transformation work.

#### **3b. Cost savings:**

The cost savings would translate not in the staffing to deliver GRACE and LEAD services, but in the emergency response, medical, and criminal justice systems. Behavioral health services delivered pursuant to a coordinated community support plan are less expensive and more effective than numerous emergency services responses from EMS or law enforcement.

#### **4a. Outcomes:**

Decreased use of emergency services. Diversion from arrest and incarceration.

#### **4b. Measures:**

The GRACE program will provide services to 80 adults at any given time. The LEAD program will provide services to for 65-80 adults at any given time and is expected to more than double with the expansion funding available from the state.

#### **5a. Other Departments/Agencies:**

n/a

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

n/a

#### **6. Funding Source:**

Increased Behavioral Health sales tax revenue.

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3575

Fund 130100

Cost Center 130100

Originator: Tawni Helms

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: EMS - Stryker contract adjustment

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6680	Office Equip Maintenance	\$14,576
	<b>Request Total</b>		<b>\$14,576</b>

### 1a. Description of request:

Whatcom County EMS entered into a 10 year agreement for the acquisition of 52 new gurneys for the EMS system. It was later discovered that two of the loaners that were provided to the system and later replaced with 2 new gurneys were not incorporated into the total. Contract is being revised to include all 54 gurneys.

### 1b. Primary customers:

Whatcom County EMS system and recipients of EMS services

### 2. Problem to be solved:

Two gurneys provided on loan to the EMS System and later replaced with permanent gurneys were not included in the contract which only listed 52 gurneys system wide. The actual number of gurneys acquired and maintained for the EMS system is 54.

### 3a. Options / Advantages:

The two additional gurneys are necessary for the EMS system to allow for the transfer of patients during calls.

### 3b. Cost savings:

The contractor agreed to waive the first year fee because the contract had not been amended to include the two gurneys.

### 4a. Outcomes:

54 gurneys are being used throughout the County.

### 4b. Measures:

### 5a. Other Departments/Agencies:

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

### 6. Funding Source:

EMS Fund

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3577

Fund 130

Cost Center 130120

Originator: Tawni Helms

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 5th Medic Unit Implementation

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7210.006	Intergov Prof Svcs	\$150,000
	Request Total		\$150,000

### 1a. Description of request:

On August 10, 2021 Whatcom County Council approved Ordinance 2021-051 which included a budget supplemental to allow funding for the costs associated with Lynden Station 75 renovations. The alterations are being made to house 5th medic unit personnel. The renovations were anticipated to be completed in late 2021 however, the work will begin in 2021.

### 1b. Primary customers:

Whatcom County EMS System and citizens

### 2. Problem to be solved:

Whatcom County EMS has been planning for and data has supported the need for a 5th Medic Unit. Whatcom County has studied the need for a 5th Medic Advance Life Support (ALS) for a number of years. Preparation has begun to outfit and renovate fire stations to accommodate the additional personnel.

Although the funding was approved in 2021 the contract was not entered into between the City of Lynden and Whatcom County EMS. Therefore we are unable to move the funding forward to 2022 and must put forward a budget supplemental. The contract between Whatcom EMS and the City of Lynden is on the same agenda as this budget supplemental.

### 3a. Options / Advantages:

Funding the renovations to accommodate additional personnel in existing buildings is the most cost effective option.

### 3b. Cost savings:

n/a

### 4a. Outcomes:

Ultimately, an additional AKS unit will be implemented to meet the needs of a growing population.

### 4b. Measures:

Success will be measured when the 5th Medic Unit is fully operational and running 24/7 and all station remodels have been completed.

### 5a. Other Departments/Agencies:

City of Lynden, Fire Department

City of Bellingham, Fire Department

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

Lynden Fire Chief, Mark Billmire

Bellingham Fire Chief, Bill Hewett

# Supplemental Budget Request

*Status:* Pending

## Non-Departmental

Suppl ID # 3577

**Fund** 130

**Cost Center** 130120

**Originator:** Tawni Helms

### 6. Funding Source:

EMS Levy Fund



# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3576

Fund 141

Cost Center 14100

Originator: Tawni Helms

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Tourism - Economic Recovery and Revitalization

X

Department Head Signature (Required on Hard Copy Submission)

Date

1-24-22

Costs:	Object	Object Description	Amount Requested
	6610	Contractual Services	\$95,000
	<b>Request Total</b>		<b>\$95,000</b>

### 1a. Description of request:

Bellingham Whatcom County Tourism (BWCT) submitted a funding proposal to use Tourism Fund monies to support a tourism recovery program. On January 19, 2022 the Whatcom County Lodging Tax Committee met and reviewed the proposal. The Committee unanimously approved the funding proposal for recommendation to the County Council. The proposal includes the following activities:

Datafy Dashboard and Insights - contract for a geolocation data service to analyze data provided from mobile devices to find actionable insights that will help BWCT make strategic, data-driven marketing decisions for our region. \$20,791

TREAD Map Real-Time Trail Information Map - Acquire TREAD Map - a comprehensive interactive APP map portal. This app provides real-time interaction between land and recreation managers, user groups, business communities, and outdoor enthusiasts. This project is being subsidized by the Washington Tourism Alliance and with this financial commitment Whatcom County is the next in line to become part of a statewide network of trails. \$30,000

Strategic Tourism Master Plan - This process will employ an outside entity to review and consolidate key points of all previous plans and studies around strategic destination management and economic development and lay out a map for project funding. \$25,000

BrandUSA Outreach Partnership - This is another Co-op opportunity made possible through the Washington Tourism Alliance to communicate readiness, storytelling and actionable digital interactions across targeted placements to an international audience, focused primarily on Canada. \$12,975

Snowledge Video Partnership - Film development for awareness and education for adventure tourism for Mount Baker. \$ 5,000

Estimated total is \$93,766. Contract will be written as not to exceed \$95,000.

### 1b. Primary customers:

Whatcom County businesses and residents will benefit from tourism revenue with the return of visitors to Whatcom County.

### 2. Problem to be solved:

Whatcom County like many other counties across the country have been impacted by low tourism resulting from the pandemic. As we slowly emerge from the pandemic, tourism and traveler sentiment research shows that tourism in 2022 has the capability to spring back to pre-pandemic levels. This Economic Recovery and Revitalization program has targeted areas that are most likely to draw in more tourism. BWCT is focused on attracting travelers and their economic recovery spending in 2022 and into

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3576

Fund 141

Cost Center

Originator: Tawni Helms

the continued recovery period of 2023.

### 3a. Options / Advantages:

Several of these outreach components are utilizing new technology and data driven marketing efforts to draw in tourists. Two of the components are subsidized by the Washgton Tourism Alliance which allows us to leverage their funding to complete the projecct.

### 3b. Cost savings:

N/A

### 4a. Outcomes:

New trail map apps will be available to users of Whatcom County trails, Monthly analysis of geolocation data will be available as dashboard information and insight for BWCT allowing them to make data-driven marketing decisions for our regions which will further enhance tourism opportunities and experiences. d

### 4b. Measures:

BWCT will provide year-end report to the Whatcom County Council demonstrating the accomplishments and impacts of these investments.

### 5a. Other Departments/Agencies:

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

### 6. Funding Source:

Whatcom County Lodging Tax

# Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3572

Fund 167

Cost Center 1673521003

Originator: Frances Burkhart

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 21EMPG-ARPA

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/18/22

Costs:	Object	Object Description	Amount Requested
	4333.8704	FEMA Military	(\$25,325)
	6120	Extra Help	\$14,001
	6230	Social Security	\$1,071
	6255	Other H&W Benefits	\$21
	6259	Worker's Comp-Interfund	\$187
	6269	Unemployment-Interfund	\$45
	6320	Office & Op Supplies	\$2,500
	6610	Contractual Services	\$7,000
	7140	Meeting Refreshments	\$500
	<b>Request Total</b>		<b>\$0</b>

## 1a. Description of request:

The US Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) awarded a Federal Fiscal Year 2021 Emergency Management Performance Grant American Rescue Plan Act (21EMPG-ARPA) grant to Whatcom County in the amount of \$25,325 (AB2022-047). This grant will allow Whatcom County Sheriff's Office Division of Emergency Management (WCSO-DEM) to fund:

1. A part-time Extra Help position to support administrative projects,
2. A contractor/consultant to assist in the development of the Wildland Fire/Urban Interface Plan, and
3. The purchase of supplies and meeting refreshments needed for training and exercise activities.

## 1b. Primary customers:

Local emergency management, partner agencies, and the residents of Whatcom County.

## 2. Problem to be solved:

Current staffing and budget levels are not adequate to support all of the activity required to execute WCSO-DEM's programs, particularly with the additional impact of the two-year COVID and the historic November-2021 flood responses.

## 3a. Options / Advantages:

21EMPG-ARPA funds have been awarded specifically to support these projects that would otherwise have to be funded with local monies, postponed, or eliminated.

## 3b. Cost savings:

\$25,325

## 4a. Outcomes:

1. Extra Help position: Employee is in place and will continue with various administrative and archiving tasks begun in Fall 2021 under a previous EMPG grant.
2. A contractor/consultant will be retained by Summer 2022 to assist with the Wildland Fire/Urban Interface Plan development.
3. Training and exercise activities are planned for Summer and Fall 2022.



## Supplemental Budget Request

Status: Pending

**Sheriff**

**Emergency Management**

Suppl ID # 3572

**Fund** 167

**Cost Center** 1673521003

**Originator:** Frances Burkhart

**4b. Measures:**

Progress on all projects, timesheets, invoices, exercise After Action Reports, etc., will be monitored.

**5a. Other Departments/Agencies:**

Washington State Military Department Emergency Management Division will administer and audit grant activities.

Federal, state, local, and tribal representatives and responders will participate in Wildland Fire/Urban Interface Plan development, as well as in training and exercise activities.

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

As needed.

**6. Funding Source:**

Federal DHS/FEMA 21EMPG-ARPA grant, CFDA # 97.042 (21EMPG), which is passed through the Washington State Military Department.

## Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3591

Fund 167

Cost Center 1673521007

Originator: Brad Bennett

Expenditure Type: One-Time Year 2 2022 Add'l FTE ☐ Add'l Space ☐ Priority 1

Name of Request: Nov Fld Debris Mgmt (carry over of 2021 funding)

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/26/22

Costs:	Object	Object Description	Amount Requested
	6610	Contractual Services	\$500,000
	<b>Request Total</b>		<b>\$500,000</b>

**1a. Description of request:**

Load, Haul, dispose of flood debris stockpiled at Halverstick pit and restore condition of site.

**1b. Primary customers:**

Citizens impacted by the November flood.

**2. Problem to be solved:**

Halverstick Pit was established as an emergency dump site for flood debris. It is necessary to contract for the proper disposal of the accumulated debris and restoration of the site.

**3a. Options / Advantages:**

No other viable option.

**3b. Cost savings:**

-None-

**4a. Outcomes:**

Restored Haverstick Pit to original condition. Work should be completed by March 2022

**4b. Measures:**

Restored Haverstick Pit to original condition.

**5a. Other Departments/Agencies:**

No

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

N/A

**6. Funding Source:**

The project will be funded by the remaining funding transferred to Emergency Management from the General Fund in 2021 for support to victims of the November 2021 flood.

If FEMA public assistance is granted these costs may be eligible for reimbursement.

# Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3568

Fund 167

Cost Center 1673521011

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: WA St Military - Disaster Case Management Grant

X

Department Head Signature (Required on Hard Copy Submission)

Date

01/25/22

Costs:	Object	Object Description	Amount Requested
	4334.0181	State Military Department	(\$230,208)
	6110	Regular Salaries & Wages	\$40,667
	6210	Retirement	\$3,965
	6230	Social Security	\$2,959
	6245	Medical Insurance	\$8,580
	6255	Other H&W Benefits	\$864
	6259	Worker's Comp-Interfund	\$101
	6259	Worker's Comp-Interfund	\$364
	6610	Contractual Services	\$172,708
	<b>Request Total</b>		<b>\$0</b>

## 1a. Description of request:

Whatcom County received a WA State Military Department grant of \$230,208 to assist with recovery from Incident Number 21-4321 November Atmospheric River Impacts.

The Sheriff's Office Division of Emergency Management (DEM) will use these funds to hire a Whatcom Recovery Manager, contract with a community organization to provide case management services, and for Disaster Leadership Team training.

The Sheriff's Office Division of Emergency Management will hire one temporary extra help employee (Whatcom Recovery Manager) for one year to manage the recovery activity within Whatcom County. Fully burdened cost for this position will be \$115,000. The current allocation will cover one half of the costs for this position (\$57,500).

DEM will also contract with a community organization to provide Disaster Case Management (DCM) services to affected individuals and families. Total cost for this contract is estimated at \$262,500. The current allocation will cover \$162,708 of the estimated costs.

In addition, DEM will hire a Disaster Leadership Team to provide training to those involved with recovery efforts. Total cost for this training is estimated at \$20,000. The current allocation will cover \$10,000.

Once the additional allocation of \$167,292 is received, a subsequent supplemental budget will be submitted for the remaining costs: \$57,500 for Whatcom Recovery Manager, \$99,792 for the DCM contract, and \$10,000 for Disaster Leadership Team training.

## 1b. Primary customers:

Whatcom County citizens and victims of the incident.

## Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3568

Fund 167

Cost Center 1673521011

Originator: Dawn Pierce

**2. Problem to be solved:**

The Washington State Military Department, Emergency Management Division issued Incident Number: 21-4321 "November Atmospheric River Impacts." This Atmospheric River weather event began November 15, 2021 and caused significant flooding in Whatcom County resulting in extensive damage to homes and personal property. Additional resources are needed to manage and assist with recovery efforts.

**3a. Options / Advantages:**

Funds are allocated specifically to provide Disaster Case Management to individuals and families affected by the Atmospheric River weather event.

**3b. Cost savings:**

\$230,208.

**4a. Outcomes:**

The Recovery Manager was hired January 18, 2022 and contracts for services will be executed as soon as possible to assist affected individuals and families.

**4b. Measures:**

**5a. Other Departments/Agencies:**

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

**6. Funding Source:**

The State of Washington Military Department.

# Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3571

Fund 167

Cost Center 1673521010

Originator: Dawn Pierce

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Temp Extra Help for Incident 21-4321 Recovery

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6110	Regular Salaries & Wages	\$180,294
	6210	Retirement	\$18,480
	6230	Social Security	\$13,793
	6245	Medical Insurance	\$63,600
	6255	Other H&W Benefits	\$6,912
	6259	Worker's Comp-Interfund	\$2,912
	6269	Unemployment-Interfund	\$469
	8301	Operating Transfer In	(\$286,460)
	<b>Request Total</b>		<b>\$0</b>

## 1a. Description of request:

Proposal to hire four (4) temporary extra help positions in the Sheriff's Office Division of Emergency Management (DEM) for one (1) year to assist with recovery efforts involving Washington State Military Department Incident Number 21-4321 "November Atmospheric River Impacts." Requested positions are: one (1) Individual Assistance Lead, two (2) Individual Assistance Coordinators, and one (1) Clerk III.

The Individual Assistance Lead will report to the Whatcom Recovery Manager and will manage a team of Individual Assistance Coordinators providing assistance to individuals and families impacted by the November 2021 flooding.

The Individual Assistance Coordinators (IAC) will be responsible for assessing the needs of individuals and families impacted by the flood and to assist them through the federal, state, and local Individual Assistance Declaration process. The IAC will help each client develop and execute a recovery plan and will also provide appropriate community referrals.

## 1b. Primary customers:

Whatcom County citizens and victims of the flood event.

## 2. Problem to be solved:

The Washington State Military Department, Emergency Management Division issued Incident Number: 21-4321 "November Atmospheric River Impacts." The Atmospheric River weather event that occurred beginning November 15, 2021 caused significant flooding in Whatcom County resulting in extensive damage to homes and personal property. Many Whatcom County residents were impacted and additional resources are needed to help citizens navigate the long-term recovery process.

## 3a. Options / Advantages:

## 3b. Cost savings:

Tuesday, January 25, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

Status: Pending

**Sheriff**

**Emergency Management**

Suppl ID # 3571

**Fund** 167

**Cost Center** 1673521010

**Originator:** Dawn Pierce

**4a. Outcomes:**

Temporary extra help staff will be hired as soon as possible to assist individuals and families affected by the flood.

**4b. Measures:**

**5a. Other Departments/Agencies:**

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

**6. Funding Source:**

General Fund with possible reimbursement from FEMA if funds become available.

# Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3587

Fund 167

Cost Center 1673521008

Originator: Frances Burkhart

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: 21-4321 WA St Military Emergency Housing Grant

X

Department Head Signature (Required on Hard Copy Submission)

01/25/22  
Date

Costs:	Object	Object Description	Amount Requested
	4334.0181	State Military Department	(\$1,424,900)
	6610	Contractual Services	\$674,900
	6870	Space Rental	\$750,000
	Request Total		\$0

## 1a. Description of request:

Per Whatcom County contract 202201001 (MIL contract U22-034), the State of Washington, through the Washington State Military Department, will reimburse Whatcom County for temporary emergency housing costs incurred from November 16, 2021 to April 30, 2022, for individuals displaced by the flooding event beginning November 15, 2021. These costs shall not exceed one million, five-hundred thousand (\$1,500,000) dollars. Eligible expenses include:

- Rent or lease of housing units,
- Food for individuals housed,
- Housing supplies including cleaning supplies,
- Labor to monitor housing sites and labor to clean and maintain sites as required, and
- Repairs of any damage to the rented/leased facilities.

Approximately \$75,100 in housing expenses were encumbered in 2021, leaving a balance of \$1,424,900 available in 2022.

The Sheriff's Office Division of Emergency Management will utilize these funds for:

\$674,900 - Contracted Services: Food Service provider contracts and contracts with Community Partners providing housing and housing support services.

\$750,000 - Space Rental: Direct payment to hotels/motels/other housing units.

## 1b. Primary customers:

Individuals and families displaced from their Whatcom County homes due to November flooding.

## 2. Problem to be solved:

Whatcom County experienced devastating flooding beginning November 15, 2021 (Washington State Military Department Emergency Management Division Incident Number 21-4321 "November Atmospheric River Impacts"). The resulting damage displaced several hundred people, predominately in Everson, Nooksack, Sumas, and unincorporated Whatcom County. Due to life safety concerns, Whatcom County is providing temporary emergency housing to the individuals displaced by the flooding until April 30, 2022.

## 3a. Options / Advantages:

Funds are allocated specifically to provide emergency housing and emergency housing support to individuals and families affected by Incident Number 21-4321 "November Atmospheric River Impacts."

## 3b. Cost savings:

\$1,424,900

## 4a. Outcomes:

Residents of Whatcom County displaced by the 21-4321 "November Atmospheric River Impacts" event

Tuesday, January 25, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

Status: Pending

Sheriff

Emergency Management

Suppl ID # 3587

Fund 167

Cost Center 1673521008

Originator: Frances Burkhart

will be provided with emergency housing and food support.

**4b. Measures:**

**5a. Other Departments/Agencies:**

Washington State Military Department will administer the funds.

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

**6. Funding Source:**

\$1,424,900 from the State of Washington, Washington State Military Department, MIL Contract # U22-034.



# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3578

Fund 332

Cost Center 332248

Originator: Tawni Helms

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: POB Rural Broadband

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7220	Intergov Subsidies	\$2,000,000
	<b>Request Total</b>		<b>\$2,000,000</b>

### 1a. Description of request:

The Port of Bellingham (Port) applied and was approved for recommendation to Council a \$2 million grant from the Economic Development Investment Board (EDI) for the purpose of leveraging state or federal grant funding to build broadband infrastructure in rural Whatcom County to serve our unserved and underserved populations. Council approved this recommendation for the full \$2 million with the following conditions:

- a) The Port received additional grant funding
- b) The Port construct fiber to the home (FTTH) projects that provide service to the end customer

The Port has met these two requirements which allow for the budget supplemental to move forward.

### 1b. Primary customers:

Rural Whatcom County citizens will now have access to Broadband with the completion of this project.

### 2. Problem to be solved:

Access to broadband in rural Whatcom County, not unlike many rural county's in the country, has been a challenge to accomplish. With the continued work of the Port, small cities sufficient funding has been leveraged for the construction of 73 miles of open access fiber network. This will serve at least 1,540 homes and multiple businesses in previously underserved and unserved rural Whatcom County.

### 3a. Options / Advantages:

### 3b. Cost savings:

The Port was able to leverage this EDI funding to meet the matching requirement for two separate successful applications that resulted in \$8M in construction financing and two construction projects for a total of 73 miles of open access fiber network and 1,540 homes/35 businesses.

### 4a. Outcomes:

A total of 73 miles of open access fiber network serving 1,540 homes and 35 businesses.

### 4b. Measures:

Underserved and unserved families and business owners in rural Whatcom County will have access to fiber network.

### 5a. Other Departments/Agencies:

Project development and success involves many partners such as PUD#1, a local Internet Service Provider (ISP), Whatcom County, tribes and small cities.

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

Monday, January 24, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

*Status:* Pending

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### Non-Departmental

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Suppl ID # 3578

**Fund** 332

**Cost Center** 332248

**Originator:** Tawni Helms

#### 6. Funding Source:

Public Utilities Improvement Fund

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## MEMO

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**Date:** January 21, 2022

**TO:** County Council Chair Barry Buchannan  
County Executive Satpal Sidhu

**CC:** Tyler Schroder

**From:** Gina Stark, Economic Development Project Manager

**Re:** EDI Funding Supplemental Budget Request

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### **Background**

The Port of Bellingham (Port) applied and was awarded \$2 million from the Economic Development Investment Board (EDI) for the purpose of leveraging state or federal grant funding to building broadband infrastructure in rural Whatcom County to serve our unserved and underserved populations.

The EDI recommendation of funding went before the County Council for approval. County Council approved the EDI funding recommendation with two pre-distribution requirements:

- 1) The Port received the broadband grant funding
- 2) The Port construct fiber to the home (FTTH) projects that provide service to the end customer

The purpose of this memo is to illustrate the Port and the Whatcom County Project has meet these two requirements. In addition, we would like to request the \$2million EDI funding be place in the supplemental budget so we may provide evidence of matching funds to our funders.

### **Accomplishments**

The County Council approved \$2million of EDI funding to be used as matching funding for broadband grants. The Port was able to leverage the EDI funding to meet the matching requirements for two separate successful applications that



## PORT OF BELLINGHAM *Washington State*

resulted **\$8 million** in construction financing and two construction projects for a total of **73 miles** of open access fiber network and **1,540 homes/35 businesses** passed.

The first grant Port applied for was the Community Economic Revitalization Board (CERB) Rural Broadband Construction Grant. The grant was for \$3million with a \$1million match and total project cost of \$3 million. This will go to build 47.5 miles of open access fiber network in area just north of the city of Lynden along the Canadian boarder. It will serve approximately 440 homes and 10 businesses. When the project is completed community members will have access to a minimum of 100Mbps/100 Mbps symmetrical speeds and up to 1Gbps/1Gbps speeds.

In November 2021 the Port applied to the Washington State Broadband Office for the Broadband Accelerated Grant. In January the Whatcom County Broadband Project was awarded \$4million. This project had a \$1million match from the County EDI making the total project cost \$5million. The service area for this project is located just east of Lake Terrell and west of the city of Ferndale. The network service area is 26 miles of open access fiber that will serve approximately 1,100 homes and 25 businesses. Upon completion of the project community members will have access to 100Mbps/100Mbps symmetrical minimum speeds and up to a maximum speed of 1Gbps/1Gbps symmetrical.

For both projects the Whatcom County project is working with a local Internet Service Provider (ISP) Pogo Zone in a public/ private partnership to construct and maintain the network as well as providing service to the end user. We are also working with other ISPs to be potential users of the open network.

### Action

We are grateful to the County Council for approving these EDI funds that can be used as matching funds. They enable the Port to apply and submit successful applications. However, for both CERB and WSBO the Port has pre-contract obligations we must fulfill. We are requesting the County Council approve the \$2million in the supplemental budget and provide a letter of commitment for each of our funders.



# Supplemental Budget Request

Status: Pending

## Administrative Services

## Facilities Management

Suppl ID # 3579

Fund 507

Cost Center 50762

Originator: Rob Ney

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Central Shop Server Room AC Replacement

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7060	Repairs & Maintenance	\$15,000
	Request Total		\$15,000

### 1a. Description of request:

The IT server room AC unit at the Central Shop has ailed multiple times over the past several months. The first failure was just after the mid-biennium budgets were due. This is an important room with many IT related components that must be kept at a safe temperature for the equipment.

This AC unit was installed in the 1990's and has exceeded its life expectancy. Facilities and IT would like to replace this aging unit so ensure reliability.

The cost to replace this unit is estimated at \$14,000, including sales tax and a contingency of \$1,000 in this ASR.

### 1b. Primary customers:

County Staff located in Central Shop and Northwest Annex, as well as the IT Department.

### 2. Problem to be solved:

This HVAC unit has shown signs that it is near catastrophic failure. It is prudent for the County to replace this unit and there is not current funding in place to implement this improvement.

### 3a. Options / Advantages:

Staff has "bandaged" this AC unit as long as it could to extend the life of the unit. Expending additional funds to repair this unit is not a prudent path forward. It will ensure reliability.

### 3b. Cost savings:

There are not specific cost savings associated with this action.

### 4a. Outcomes:

The unit will be funded and installed under budget.

### 4b. Measures:

If the project is fully funded and installation is authorized.  
The unit will be installed at or under budget.

### 5a. Other Departments/Agencies:

No  
None

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

Rob Ney, Project & Operations Manager

### 6. Funding Source:

Administrative Services Fund Balance

Monday, January 24, 2022

Rpt: Rpt Suppl Regular



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-088

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<b>File ID:</b>	AB2022-088	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<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>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance closing the State Street Building Acquisition and Improvement Fund 348

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requests closing the State Street Building Acquisition and Improvement Fund 348 and transferring the remaining fund balance to the new Way Station Project Fund.

---

### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** Proposed Ordinance

PROPOSED BY: Executive  
INTRODUCTION DATE: 02/08/22

ORDINANCE NO. \_\_\_\_\_

**CLOSING STATE STREET BUILDING ACQUISITION AND IMPROVEMENT  
FUND 348**

**WHEREAS**, on November 12, 2013 Ordinance 2013-060 created the State Street Building Acquisition and Improvement Fund and established a project-based budget for this capital project, and

**WHEREAS**, the purchase of the building was to enable Whatcom County to discontinue use of the Northwest Annex and to relocate Planning and Development Services Department and development related functions of the Public Works Department, and

**WHEREAS**, the project as originally described has now been abandoned, and

**WHEREAS**, remaining fund balance of the State Street Building Acquisition and Improvement Fund can be utilized for renovation of the State Street building required for the Way Station Project,

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that the State Street Building Acquisition and Improvement Fund is hereby dissolved and the remaining cash balance is to be transferred to the new Way Station Project Fund.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

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

\_\_\_\_\_  
Satpal Singh 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: AB2022-089

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<b>File ID:</b>	AB2022-089	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/28/2022	<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>	02/08/2022			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Ordinance establishing the Way Station Project Fund and establishing a project based budget for the Way Station Project

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Request establishes the Way Station Project Fund and requests a project based budget in the amount of \$2,384,322 for Phase I.

---

### HISTORY OF LEGISLATIVE FILE

---

Date:	Acting Body:	Action:	Sent To:

---

**Attachments:** Proposed Ordinance, Exhibit A



ORDINANCE NO. \_\_\_\_\_

**ORDINANCE ESTABLISHING THE WAY STATION PROJECT FUND AND ESTABLISHING A  
PROJECT BASED BUDGET FOR THE WAY STATION  
PROJECT**

**WHEREAS**, Whatcom County and its partner agencies of PeaceHealth St. Joseph Medical Center, Opportunity Council and Unity Care NW, wish to renovate the County's 1500 N. State Street property for the purpose of providing services to people who are homeless and living either in shelters or who are unsheltered, and

**WHEREAS**, the County will use portions of the building to provide county services, including the Medical Examiner, county morgue, Countywide Emergency Medical Services administration, the GRACE & LEAD programs, as well as other Health Department services, and

**WHEREAS**, extensive renovations are needed to accommodate these services, and

**WHEREAS**, funding of \$2,384,322 for Phase I of this project will be available from the transfer in of the fund balance from the closure of the abandoned State Street Acquisition and Improvement Fund project, and

**WHEREAS**, Public Utilities Improvement Fund funding included in the State Street Acquisition and Improvement Fund project fund balance is appropriate for expenditure on the Way Station project, and

**WHEREAS**, it is anticipated that the County Council will adopt an amendment to the Comprehensive Economic Development Strategy (CEDS) Plan to include clarification that the project listed for 1500 N. State Street, in the current CEDS Plan, is for the Way Station Project, and

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

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that a new fund is hereby established effective February 22, 2022 known as the Way Station Project Fund. This fund shall be used to account for the revenues and expenditures related to renovating the 1500 N. State Street building, and

**BE IT FURTHER ORDAINED** by the Whatcom County Council that the Way Station Project Fund is approved as described in Exhibit A with an initial project budget of \$2,384,322.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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

\_\_\_\_\_  
Todd Donovan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

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

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

# EXHIBIT A

## Supplemental Budget Request

Status: Pending

### Administrative Services

### Facilities Management

Suppl ID # 3574

Fund

Cost Center

Originator: Rob Ney

Expenditure Type: One-Time

Year 2 2022

Add'l FTE ☐

Add'l Space ☐

Priority 1

Name of Request: Way Station

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	7350	Buildings & Structures	\$2,384,322
	Request Total		\$2,384,322

#### 1a. Description of request:

An amended Memorandum of Understanding is under consideration by the Council. The purpose of the MOU is to establish a cost sharing mechanism for the Way Station, a collaborative initiative to which provides recuperative respite care, health care services, hygiene services, and case management services to unsheltered individuals. This effort will require substantial renovation of the State Street facility.

A project based budget was created in 2013, for the purpose of remodeling the building in anticipation of moving the Northwest Annex occupants into the building. That effort evolved into re-consolidated the Health Department into the building. At this point, it is believed that the use is different than the original intent, that fund should be abolished/closed, and a new project based budget should be created identifying the remodel of the building for the Way Station and other ancillary uses.

The purpose of this action is to place the funds in the existing State Street project based budget into this newly created State Street/Way Station fund.

See Memo in the amended MOU agenda item for additional funding breakdown of the Way Station.

#### 1b. Primary customers:

The general public that would be served by the new uses provided in the Way Station. Additionally, other Whatcom County uses will be utilizing the second floor renovations.

#### 2. Problem to be solved:

This is a house keeping mechanism, intended to create a fund that is consistent with the new Way Station project in the State Street facility.

#### 3a. Options / Advantages:

This is the cleanest mechanism to establish a new fund that is clearly consistent with the intended use.  
This is a mechanism that will be supported by an audit.

#### 3b. Cost savings:

There are not specific cost savings associated with this action.

#### 4a. Outcomes:

Should the MOU be approved, and this fund be created, staff can begin accepting funding sources by our Partners in the Way Station and begin architectural and engineering work on the project.

#### 4b. Measures:

If the project is fully funded and construction is authorized.  
Once the State Street Project is complete and the Way Station is functional, serving the public.

#### 5a. Other Departments/Agencies:

Wednesday, January 19, 2022

Rpt: Rpt Suppl Regular

## Supplemental Budget Request

*Status:* Pending

### Administrative Services

### Facilities Management

Suppl ID # 3574

**Fund**

**Cost Center**

**Originator:** Rob Ney

The Morgue should be the most impacted department.  
None.

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

Rob Ney, Project & Operations Manager

**6. Funding Source:**

Current State Street Project budget



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-082

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<b>File ID:</b>	AB2022-082	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/27/2022	<b>Entered by:</b>	CStrong@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	02/08/2022	<b>Enactment #:</b>			

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Primary Contact Email: [Click here to enter text.](#)

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

Ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations) and 22 (Land Use and Development)

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

Planning and Development Services annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This year's 8 proposed code amendments include such items and one proposed policy change.

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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

## Miscellaneous Code Amendments 2021

### I. Background Information

**File #** PLN2019-00006

**File Name:** Miscellaneous Code Amendments 2021

**Applicants:** Whatcom County Planning and Development Services (PDS)

**Summary of Request:** Proposed amendments to WCC Titles 20 (Zoning) and 22 (Land Use and Development). This is an annual “code scrub,” wherein staff proposes amendments to clarify code, fix inconsistencies and grammar, and modify certain policies to a small degree.

**Location:** Countywide.

**Background:** Planning and Development Services annually proposes a series of code amendments to improve unclear wording or procedures, or to correct errors or outdated text. This year’s 8 proposed code amendments include such items as well as one proposed policy change (found in proposed amendment 3 addressing the process for exceeding forestland retention limits in the Rural Forestry district).

### II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein.

### III. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan’s Goal 2D to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”

### IV. Proposed Findings of Fact and Reasons for Action

Staff recommends the Planning Commission adopt the following findings of fact and reasons for action:

1. The Council’s 2021 docket includes item PLN2021-00006, “Review and revise the Whatcom County Zoning Code and other sections of the County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Revisions needed to achieve consistency with the Growth Management Act may also be considered.”
2. Whatcom County Planning and Development Services submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 17, 2021.

4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on December 10, 2021, for their 60-day review. No comments were received.
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on January 13, 2021.
6. The County Council held a duly noticed public hearing on the proposed amendments on \_\_\_\_\_, 2022.
7. The amendments are consistent with Comprehensive Plan Policy Goal 2D to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
8. In reference to Exhibit A, Amendment No. 1: The proposed amendments to WCC 20.04.035 only cleans up outdated references to certain County departments and divisions.
9. In reference to Exhibit A, Amendment No. 2: The proposed amendments to WCC 20.38.060 only fix grammar.
10. In reference to Exhibit A, Amendment No. 3: Unlike in other districts the existing lot coverage section of the Rural Forestry district contains both lot coverage rules *and* forestland retention rules. The proposed amendments to WCC 20.42.450 and addition of 20.42.455 would split these concepts into separate sections. Additionally, the current forestland protection regulation allows the 20% limit to be exceeded through a Conditional Use Permit (CUP) (or Planned Unit Development (PUD)), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsidizes more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views, contrary to the intent of this district. Changing the process for exceeding the 20% clearing limit would require that such applicants, if not doing a PUD, show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria. The remaining members of Council’s Forestry Advisory Committee were consulted and have endorsed these amendments.
11. In reference to Exhibit A, Amendment No. 4: The amendments to WCC 20.22.662, 20.24.652, 20.32.652, 20.34.652, 20.36.652, 20.37.651, 20.40.662, 20.42.652, and 20.43.662 would make the mineral lands disclosure requirement of 500 (rather than 300) feet consistent with WCC 14.06.030(B) (Mineral Resource Land – Disclosure), a change Council made in 2003 (ORD2003-061). Though Council updated that section, the revised distance was not carried through to the language in the individual districts, creating an inconsistency. These amendments would rectify that.
12. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.36.156, 20.40.165, 20.42.157, 20.51.101, 20.59.201, 20.61.051, 20.62.155, 20.66.082, 20.71.221, 20.72.154, and 20.72.204, and the addition of 20.97.004 would standardize the language used for kennels and accessory kennels, as suggested by the Whatcom County Hearing Examiner.
13. In reference to Exhibit A, Amendment No. 6: In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, and adopted new definitions. However, the previous (then existing) definitions were not deleted. Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they’re listed as both in 5 of those zones. The amendments would delete family day care homes as permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM,

UR-MX, RR-I, R, TZ, AG, NC, and RGC districts. The deletion of WCC 20.20.059, 20.22.057, 20.24.057, 20.37.056, 20.40.057, and 20.97.052.1 would clean up these inconsistencies.

14. In reference to Exhibit A, Amendment No. 7: The amendments to WCC 20.40.254 clarify which general standards apply only to agricultural short plats vs. agricultural boundary line adjustments.
15. In reference to Exhibit A, Amendment No. 8: The amendment to WCC 22.05.100(3) clarifies the timeline for applicants to respond to a Notice of Additional Requirements.

## **V. Proposed Conclusions**

1. The amendments to the development regulations are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VI. Recommendations**

On January 13, 2022, the Planning Commission voted 6 to 0 (3 members absent) to recommend to Council approval of the proposed code amendments. Planning and Development Services staff concurs with their recommendation as the amendments are necessary to add clarity to development regulations and procedures, to keep the code up to date, and to fix some inconsistencies.

## **Attachments**

1. Draft Ordinance
2. Exhibit A – Proposed Code Amendments



PROPOSED BY: \_\_\_\_\_  
INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**ADOPTING VARIOUS MINOR AMENDMENTS TO WHATCOM COUNTY CODE TITLES 20 (ZONING), 21 (LAND DIVISION REGULATIONS) AND 22 (LAND USE AND DEVELOPMENT)**

**WHEREAS**, The Council's 2021 docket includes item PLN2021-00006, "Review and revise the Whatcom County Zoning Code and other sections of the County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Revisions needed to achieve consistency with the Growth Management Act may also be considered."

**WHEREAS**, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Titles 20 and 22 to fulfill this directive; 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. Whatcom County Planning and Development Services submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 17, 2021.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on December 10, 2021, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on January 13, 2021.
5. The County Council held a duly noticed public hearing on the proposed amendments on \_\_\_\_\_, 2022.
6. The amendments are consistent with Comprehensive Plan Policy Goal 2D to "refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."
7. In reference to Exhibit A, Amendment No. 1: The proposed amendments to WCC 20.04.035 only cleans up outdated references to certain County departments and divisions.
8. In reference to Exhibit A, Amendment No. 2: The proposed amendments to WCC 20.38.060 only fix grammar.
9. In reference to Exhibit A, Amendment No. 3: Unlike in other districts the existing lot coverage section of the Rural Forestry district contains both lot coverage rules *and* forestland retention rules. The proposed amendments to WCC 20.42.450 and addition of 20.42.455 would split these concepts into separate sections. Additionally, the current forestland protection regulation allows the 20% limit to be exceeded through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more

forest so as to obtain hilltop views, contrary to the intent of this district. Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria. The remaining members of Council's Forestry Advisory Committee were consulted and have endorsed these amendments.

10. In reference to Exhibit A, Amendment No. 4: The amendments to WCC 20.22.662, 20.24.652, 20.32.652, 20.34.652, 20.36.652, 20.37.651, 20.40.662, 20.42.652, and 20.43.662 would make the mineral lands disclosure requirement of 500 (rather than 300) feet consistent with WCC 14.06.030(B) (Mineral Resource Land – Disclosure), a change Council made in 2003 (ORD2003-061). Though Council updated that section, the revised distance was not carried through to the language in the individual districts, creating an inconsistency. These amendments would rectify that.
11. In reference to Exhibit A, Amendment No. 5: The amendment to WCC 20.36.156, 20.40.165, 20.42.157, 20.51.101, 20.59.201, 20.61.051, 20.62.155, 20.66.082, 20.71.221, 20.72.154, and 20.72.204, and the addition of 20.97.004 would standardize the language used for kennels and accessory kennels, as suggested by the Whatcom County Hearing Examiner.
12. In reference to Exhibit A, Amendment No. 6: In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, and adopted new definitions. However, the previous (then existing) definitions were not deleted. Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they're listed as both in 5 of those zones. The amendments would delete family day care homes as a permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts. The deletion of WCC 20.20.059, 20.22.057, 20.24.057, 20.37.056, 20.40.057, and 20.97.052.1 would clean up these inconsistencies.
13. In reference to Exhibit A, Amendment No. 7: The amendments to WCC 20.40.254 clarify which general standards apply only to agricultural short plats vs. agricultural boundary line adjustments.
14. In reference to Exhibit A, Amendment No. 8: The amendment to WCC 22.05.100(3) clarifies the timeline for applicants to respond to a Notice of Additional Requirements.

### **CONCLUSIONS**

1. The amendments to the development regulations are the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.

Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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 Miscellaneous Code Amendments 2021

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## WCC TITLE 20 (ZONING)

### 1) Clean-up of Department & Division Names

This is just clean-up of department and division names.

### Chapter 20.04 General Provisions

#### 20.04.035 Administrative responsibilities.

~~The land use division of the~~ Department of Planning and Development Services department is responsible for the administration of this ~~title. The division, and~~ shall act as a coordinating agent to ensure that the regulatory process is expeditious. In so doing, the Department and shall recognize input provided by other departments and divisions having appropriate expertise, including: ~~the Public Works' division of the~~ Engineering Services division for ~~solid waste,~~ road, drainage, and land alteration; the ~~Fire Marshal~~ for fire-related issues; the Whatcom County ~~Health Department~~ for domestic water, waste disposal, solid waste, and noise; and the Department's Planning Division for land use and general site design. All County departments and divisions of county government shall cooperate fully ~~with the land use division~~ in the exercise of their duties relative to land use controls and regulations.

### 2) Habitable v. Inhabitable

This is just a grammatical change. Though “habitable” and “inhabitable” mean the same thing, “habitable” is used more commonly in the code and permitting staff are more used to it. Therefore staff would like to exchange the terms in the below section.

### Chapter 20.38 Agriculture Protection Overlay

#### 20.38.060 Development and use standards.

Subdivisions or segregations for nonagricultural uses shall be clustered. Development on all parcels subject to this section shall follow the requirements below:

...

- (7) Any ~~in~~habitable structure within the cluster subdivision shall be set back a minimum of 100 feet, and any accessory or other non-~~in~~habitable structures shall be set back at least 30 feet, from the property line of any parcel that is an APO reserve tract or designated or taxed for agricultural purposes; and

...

**3) Rural Forestry Lot Coverage (1 POLICY CHANGE)**

The purpose of the Rural Forestry district is:

The primary purpose of this district is to implement the forestry designation of the Whatcom County Comprehensive Plan, established pursuant to RCW 36.70A.170, by providing the opportunity for non-industrial landowners to **manage their land for long-term productivity and sustained use of forest resources**. In addition, the district encourages the **management of land for wildlife, aesthetics, and other non-commodity values**. It also provides for uses that are compatible with these activities, while maintaining water quality and soil productivity. Lummi Island Scenic Estates shall be administered under the RR-I zone district regulations. A secondary purpose of this district is **to serve as a holding district within the urban growth area** Comprehensive Plan designations **to allow forestry uses** in the near term **while protecting the area from suburban sprawl and preserving the potential for future urban development**. [WCC 2042.010, emphasis added]

When calculating lot coverage only areas of roofed structures are included (as shown in the following definition) in all zones except the Rural Forestry district.

**20.97.217 Lot coverage.**

“Lot coverage” means the percent of a lot or parcel which is, or will be, covered by all structures located thereon. Coverage is determined by measuring areas covered by a weather tight roof. For properties within the jurisdiction of the Shoreline Management Program (WCC Title 23), submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used to compute lot coverage.

In Rural Forestry, §20.42.450 indicates that we’re to include in the calculation everything that is not in forest product production. This would include roads and other open areas not containing roofed structures; basically anything (but critical areas) not containing forest. Unfortunately the language of §20.42.450 addresses two issues: primarily maintaining forest land but a little about lot coverage.

Staff proposes to break this section into two: One actually addressing lot coverage as it’s addressed in other districts (i.e., how much land can be covered in structures), and the other addressing forest land protection (which is what the existing language is primarily about). The proposed lot coverage language is taken from that of the Rural district. The proposed forestland retention language (§20.42.455) comes from the existing “lot coverage” language. This part of the amendment is not a policy change.

However, one policy amendment staff is proposing is to require a variance, rather than a conditional use permit. The current forestland protection regulation allows the 20% limit to be exceeded (up to 35%) through a Conditional Use Permit (CUP), which worked fine in the past for the forestry industry when it was more prominent. However as the forestry industry subsides more and more houses are being built in this district, and builders are using the CUP process to clear more forest so as to obtain hilltop views. This is contrary to the intent of this district, which is for “for nonindustrial landowners to manage their land for long-term productivity and sustained use of forest resources” (§20.42.010). Changing the process for exceeding the 20% clearing limit would require that such applicants show a hardship for doing so (which in some instances may be warranted), which is not a CUP criteria.

Additionally, staff recommends that we get rid of WCC 20.40.900, which contains CUP criteria specific to this zone. The criteria for other CUPs are found in WCC 22.05.026 and are almost identical, with the exception of a few that are already covered by other sections of the code (e.g., stormwater, critical areas, etc.). We find it odd to have different CUP criteria for different zones and believe this is a holdover from days past.

## Chapter 20.42 Rural Forestry (RF) District

### 20.42.450 Lot coverage.

~~No more than 20 percent of the lot area shall be permanently altered or removed from production of forest products, excluding natural meadows, bogs, surface water and rock outcrops, unless authorized as a conditional use or the planned unit development provision of Chapter 20.85 WCC, in which case no structure or combination of structures, including accessory buildings, shall occupy or cover more than 35 percent of the lot. No structure or combination of structures, except for forest production structures, shall occupy or cover more than 5,000 square feet or 20%, whichever is greater, of the total lot area, not to exceed 25,000 square feet.~~

### 20.42.455 Forestland Retention.

~~No more than 20% of a lot's area shall be permanently altered or removed from the production of forest products, unless authorized by a variance (WCC 22.05.024) or as a Planned Unit Development (WCC Chapter 20.85), in which case no more than 35% of the lot's area shall be permanently altered or removed from the production of forest products.~~

### 20.42.150 Conditional uses.

The conditional uses listed herein shall be administered pursuant to the applicable provisions of Chapters 20.80 WCC (Supplementary Requirements), ~~and Chapter 22.05 WCC (Project Permit Procedures)~~, 16.08 the Whatcom County (SEPA) Ordinance, and Titles 21 (Land Division Regulations) the Whatcom County Subdivision Ordinance and 23 (the Whatcom County Shoreline Management Program). ~~Applicable conditional use permit criteria are established in the provisions of WCC 20.42.900 and will not be subject to the conditional use criteria provided for in WCC 22.05.026.~~

...

Editor's Note: The list of conditional uses is not being shown as they are not proposed for amendment.

### ~~20.42.900 Conditional use permit criteria.~~

~~.901 The conditional uses listed in WCC 20.42.150 shall be subject to the following forestry conditional use criteria. Said criteria listed in WCC 20.42.902 shall supersede the criteria listed in WCC 22.05.026.~~

~~.902 Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use district defining the conditional use are fulfilled and shall find adequate evidence showing that the proposed conditional use at the proposed location will:~~

- ~~(1) Be in accordance with all applicable local and state laws, standards and regulations;~~
- ~~(2) Be reasonably compatible with the surrounding environment and with the policies of the Whatcom County Comprehensive Plan;~~
- ~~(3) Not generate traffic in excess of capacity of the public road system at reasonable safety and service levels;~~
- ~~(4) Not create unreasonable demands for public expenditures to provide services, facilities, or utilities beyond those which are normally required for permitted uses in the Forestry District;~~
- ~~(5) Provide entrances to public roads or private roads open to public use in accordance with applicable county or state standards;~~

- ~~(6) Provide reasonable sound and sight buffering so as not to detract from normal use of surrounding property, public and private roads, and trails open to public use;~~
- ~~(7) Be located a reasonable distance from areas of actual or potential natural hazard;~~
- ~~(8) Not unreasonably contribute to actual or potential water quality or quantity problems;~~
- ~~(9) Be designed to provide reasonable safety from fire hazard;~~
- ~~(10) Not unreasonably interfere with any territorial or otherwise significant view from surrounding property and public roads;~~
- ~~(11) Not remove areas of native vegetation which protect shorelines and streambanks from erosion, except as necessary for such uses as culverts, bridges, boat ramps, recreation areas and stream bank stabilization projects; and~~
- ~~(12) Include reasonable soil erosion plans necessary to prevent soil, organic debris and other pollutants from entering streams, ponds, or lakes.~~

#### 4) Mineral Lands Notification Distance

In 2003, Council amended WCC 14.06.030(B) (Mineral Resource Land – Disclosure) to required that—upon conveyance of a fee interest in real property or upon the issuance of a discretionary development permit—property owners sign a disclosure acknowledging that the property is within 500 feet of Mineral Resource Lands (it had previously been 300 feet). The purpose of this requirement was “to promote a good neighbor policy between mineral and non-mineral property owners by requiring notification to purchasers and users of property adjacent to or near mine operations of the inherent potential problems associated with such purchase or use.” (WCC 14.06.010(B))

There are similar requirements in various zones; however, they all require disclosure if within 300 feet of an MRL. It appears that the change in distance was not updated everywhere (nor mentioned in the ordinance (ORD2003-061). Staff would like to rectify this inconsistency, and since ORD2003-061 was the most recent amendment to this policy we proposed to change the distance to 500 feet in each of the Title 20 sections in which this inconsistency is found.

### Chapter 20.22 Urban Residential – Medium Density (URM) District

#### 20.22.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

### Chapter 20.24 Urban Residential Mixed (UR-MX) District

#### 20.24.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.32 Residential Rural (RR) District**

### **20.32.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.34, Rural Residential-Island (RR-I) District**

### **20.34.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within ~~300~~500 feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.36 Rural (R) District**

### **20.36.652 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.37 Point Roberts Transitional Zone (TZ) District**

### **20.37.651 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of an area designated as Rural or within ~~3500~~ feet of an area upon which farm operations are being conducted shall be subject to the right to farm, right to practice forestry, and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## **Chapter 20.40 Agriculture (AG) District**

### **20.40.662 Use of Natural Resources.**

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.



## Chapter 20.42 Rural Forestry (RF) District

### 20.42.652 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

## Chapter 20.43 Commercial Forestry (CF) District

### 20.43.662 Use of Natural Resources.

All discretionary project permits for land on or within one-half mile of the area designated as Agriculture, Rural, Commercial Forestry or Rural Forestry or within 500 ~~300~~ feet of an area designated as Mineral Resource Lands in the Whatcom County Comprehensive Plan, or upon which farm operations are being conducted, shall be subject to the right to farm, right to practice forestry and mineral land disclosure policies contained in WCC Title 14, Use of Natural Resources.

### 5) Standardizing Kennel Language

In 2021 the Hearing Examiner issued a decision on an appeal of a PDS Code Interpretation (APL2020-0004) in which he raised a code construction problem: That throughout the code we use (and in the past have used) “kennel” in different ways and with different “intent” language. The following table indicates where the term “kennel” appears and its various iterations:

Zone	Permitted	Conditional Use	Prohibited	Term Used
Rural		20.36.155		Animal hospitals and <b>accessory kennels</b> and stables (subject to 3 standards)
		20.36.156		<b>Commercial kennels</b> and stables intended for the boarding or training of domestic animals
Agriculture		20.40.165		<b>Commercial kennels</b> (subject to numerous standards)
Rural Forestry		20.42.157		The operation of fur farms and <b>kennels</b>
Lake Whatcom Overlay District			20.51.100	Animal hospitals and <b>accessory kennels</b> and stables
			20.51.101	<b>Commercial kennels</b> and stables
Rural General Commercial		20.59.201		<b>Animal kennels</b>
Small Town Commercial	20.61.051(3)			Veterinary practices with <b>accessory indoor kennels</b>
		20.61.201(4)		<b>Animal kennels</b> not associated with a veterinary practice
General Commercial		20.62.155		<b>Animal kennels</b>

Rural Industrial and Manufacturing	20.69.053(5)			Animal hospital and <b>accessory kennels</b> and stables
Water Resources Protection Overlay District			20.71.220	Animal hospitals and <b>accessory kennels</b> and stables
			20.71.221	<b>Commercial kennels</b> and stables
Point Roberts Special District		20.72.154(2)		In the STC, <b>animal kennels</b> for kenneling up to six animals and that are associated with an animal groomer
			20.72.204(2)	In the STC, <b>animal kennels</b> , except as allowed by 20.72.154(2)

Because of the Hearing Examiner's suggestion, staff would like to remedy this by standardizing the language and by adding a new definition of "accessory kennel." Note that we are not proposing to amend the definition of "kennel," nor the conditions they're allowed in some of the zones.

For reference, the definition of "kennel" is:

**20.97.191 Kennel.**

"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses.

Additionally, staff recommends that kennels be allowed in the Light Impact Industrial district and proposes to add them to the permitted use section of Chapter 20.66.

## Chapter 20.97 Definitions

### **20.97.004 Accessory kennels and accessory stables**

"Accessory kennel" or "accessory stable" means the indoor facilities necessary for an animal hospital or veterinarian to house overnight animals undergoing medical care or treatment.

## Chapter 20.36 Rural (R) District

### **20.36.150 Conditional uses.**

...

**.156 Commercial ~~k~~ Kennels** and stables.

...

## Chapter 20.40 Agriculture (AG) District

### **20.40.150 Conditional uses.**

...

**.165 Commercial ~~k~~ Kennels**, ~~as identified in WCC 20.97.191~~, which shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area, provided the following criteria are met:

...

## Chapter 20.42 Rural Forestry (RF) District

### 20.42.150 Conditional uses.

...

.157 ~~The operation of f~~ur farms and kennels.

...

## Chapter 20.51 Lake Whatcom Watershed Overlay District

### 20.51.080 Prohibited uses.

...

.101 ~~Commercial k~~ennels and stables.

...

## Chapter 20.59 Rural General Commercial (RGC) District

### 20.59.200 Conditional uses.

...

.201 Retail and office type uses.

(1) ~~Animal k~~ennels.

...

## Chapter 20.61 Small Town Commercial (STC) District

### 20.61.050 Permitted uses.

...

.051 Retail and office type uses.

...

(3) Veterinary practices ~~with and~~ accessory ~~indoor~~ kennels.

...

## Chapter 20.62 General Commercial (GC) District

### 20.62.150 Conditional uses.

...

.155 ~~Animal k~~ennels.

...

## Chapter 20.66 Light Impact Industrial (LII) District

### 20.66.050 Permitted uses.

...

.082 Kennels

...

## Chapter 20.71 Water Resource Protection Overlay District

### 20.71.200 Prohibited uses.

...

.221 ~~Commercial k~~ennels and stables.

...

## Chapter 20.72 Point Roberts Special District

### 20.72.150 Conditional uses.

...

.154 In the Small Town Commercial District:

...

(2) Animal groomers and accessory kennels for ~~kenneling~~ up to six animals ~~and that are associated with an animal groomer.~~

### 20.72.200 Prohibited uses.

...

.204 The following uses are prohibited in the Small Town Commercial Zone District:

(2) ~~Animal k~~ennels, except as allowed pursuant to WCC 20.72.154(2).

## 6) Childcare Facilities Definitions.

In 2009 via Ord. 2009-034, the Council amended the definitions of and standards for the various types of childcare centers the County allows, adopting the following definitions:

### 20.97.092 Day care center.

“Day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day to 13 or more children.

### 20.97.126 Family day care home.

“Family day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for six or fewer children in the family abode of the person or persons under whose direct care the children are placed. Such care in a family day care home is limited to six or fewer children, including those children living in the home or children of other close relatives cared for in the home.

### 20.97.241 Mini-day care center.

“Mini-day care center” means a structure other than an occupied dwelling unit regularly providing care during part of the 24-hour day for 12 or fewer children. Such care in a mini-day care center is limited to 12 or fewer children, including those children of the faculty or children of other close relatives cared for by the faculty.

### 20.97.242 Mini-day care home.

“Mini-day care home” means an occupied dwelling unit regularly providing care during part of the 24-hour day for seven to 12 children in the family abode of the person or persons under whose direct care the children are placed. Such care in a mini-day care home is limited to 12 or fewer children, including those children living in the home or children of other close relatives cared for in the home.

However, the previous (then existing) definitions were not deleted by Ord. 2009-034. As clean up, staff proposes to do that now so that our code doesn't contain conflicting definitions.

Additionally, Ord. 2009-034 designated family day care homes as an accessory use (in the 9 zones where they were allowed), but failed to remove them as permitted uses, so now they're listed as both in 5 of those zones. Thus, staff proposes to delete family day care homes as a permitted in those 5 zones, leaving them as an accessory use. Doing this will not change in what districts family day care homes are allowed as an accessory use, as they would still be listed as such in the UR, URM, UR-MX, RR-I, R, TZ, AG, NC, and RGC districts.

## **Chapter 20.20 Urban Residential (UR) District**

### **20.20.050 Permitted uses.**

...

~~.059 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.22 Urban Residential – Medium Density (URM) District**

### **20.22.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.24 Urban Residential Mixed (UR-MX) District**

### **20.24.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.37 Point Roberts Transitional Zone (TZ) District**

### **20.37.050 Permitted uses.**

...

~~.056 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## **Chapter 20.40 Agriculture (AG) District**

### **20.40.050 Permitted uses.**

...

~~.057 Family day care homes subject to the requirements of WCC 20.97.180 for home occupations.~~

...

## Chapter 20.97 Definitions

### ~~20.97.052.1 Child care facilities.~~

~~“Child care facilities” means a family day care home, mini day care center, and day care center as defined below:~~

- ~~(1) “Family day care home” means a person regularly providing care during part of the 24-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed.~~
- ~~(2) “Mini day care center” means a person or agency providing care during part of the 24-hour day to 12 or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through 12 children in the family abode of such person or persons.~~
- ~~(3) “Day care center” means a person or agency that provides care for 13 or more children during part of the 24-hour day. (Ord. 99-068, 1999).~~

## 7) Agricultural Boundary Line Adjustments

The language of WCC 20.40.254 contains the general criteria that apply to the separation of farmstead parcels through both agricultural short plats and boundary line adjustments. However, some of the language is confusing as it mixes requirements for the two even though certain ones only apply to one or the other. In particular, the sections addressing “remainder parcels” only apply to short plats, not BLAs. Staff proposes to alleviate this confusion by clarifying which criteria only apply to short plats, and which apply to BLAs. No policy amendments are proposed, only grammatical ones.

### 20.40.250 Division or modification of parcels.

#### .254 Separation of the Farmstead Parcel Criteria.

- (1) The criteria for approval for the farmstead parcel and remainder parcel created through agricultural boundary line adjustment or agricultural short subdivision shall be the following:
  - (a) The area of the parcel containing the farmstead home site, whether the home exists or is to be added, is limited to the minimum amount required to encapsulate structures, parking areas, driveways, septic systems, wells, and landscaping required setbacks; and
  - (b) The farmstead parcel size shall be as stated in WCC 20.40.251, unless the existing residential structure(s) and/or well and septic constraints require a larger parcel, but shall not exceed the maximum lot size consistent with the exceptions in WCC 20.40.253; and
  - (c) The farmstead parcel and farmstead home site meet the siting criteria contained in WCC 20.40.650; and
  - (d) For agricultural short plats:
    - (i) A remainder parcel shall be created equal to or greater than 10 nominal acres; and
    - (ii) The remainder parcel shall have no existing residential development and no development rights, and a condition containing the language as provided in WCC 20.40.250(4) ~~or (5)~~ shall be included on the short plat ~~or boundary line adjustment~~ for the remainder parcel prior to final approval; and
    - (iii) The applicant and his or her heirs provide right of first purchase for a period of not less than 60 days through deed restriction to the original purchaser and subsequent purchasers of the

remainder parcel for purchase of the farmstead parcel before they are offered on the open market; and

(e) For boundary line adjustments the language as provided in WCC 20.40.250(5) shall be included on the boundary line adjustment prior to final approval:

~~(d)~~(f) A right to farm disclosure statement as provided for in WCC 14.02.040(B) will be signed by the farmstead parcel owner and subsequent purchasers of the farmstead parcel, and recorded as per WCC 14.02.040(A)(1) and 14.02.050; and

~~(e)~~(g) All land division shall comply with the appropriate map and recording provisions of WCC Title 21; and

~~(f)~~(h) The overall submittal shall comply with WCC 20.40.250 et seq.

### 8) Time Period for Responding to NOARs

Under state law, all jurisdictions (including Whatcom County) are required to act on permits within 120 days. However, this clock is stopped at certain points in the review process, one of which is when the County requests additional information when an application doesn't contain enough to ensure consistency with our codes (done through a Notice of Additional Requirements, or NOAR). To keep this schedule, and keep projects from inaction, §22.05.100(3) sets a 180-day time limit for applicants to provide this information. But it also provides an opportunity for applicants to request addition time (up to 2 years). However, staff has found that the language allowing the applicant to request additional time is unclear and would like to adjust it, as shown below.

## Title 22 LAND USE AND DEVELOPMENT

### Chapter 22.05 Project Permit Procedures

#### 22.05.100 Consistency review and recommendations.

During project permit review, the review authority shall determine if the project proposal is consistent with the county's comprehensive plan, other adopted plans, existing regulations and development standards.

...

- (3) For all project permit applications, if more information is required to determine consistency at any time in review of the application, the department may issue a notice of additional requirements. The notice of additional requirements shall allow the applicant 180 calendar days from the date of issuance to submit all required information. The ~~d~~Director ~~or designee~~ may extend this period for no more than cumulative 24 months upon written request by the applicant, provided the first request is submitted before the end of the first 180-day period. Additional extension requests may be considered if submitted before the end of any subsequent extension period. A notice of additional requirements is not a final administrative determination.

...



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2022-073

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<b>File ID:</b>	AB2022-073	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	01/21/2022	<b>Entered by:</b>	CHalka@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Council Appointment Requiring Introduction		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	02/08/2022			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Receipt of applications for the Stakeholder Advisory Committee for the Justice Project, applicants: Debra David, Peter Frazier (application deadline for any other applicants to this vacancy is 10 a.m. on February 15, 2022)

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Receipt of applications for the Stakeholder Advisory Committee for the Justice Project (Public Health, Safety, and Justice Facility Needs Assessment), applicants: Debra David, Peter Frazier (application deadline for any other applicants to this vacancy is 10 a.m. on February 15, 2022)

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Application - Debra David, Application - Peter Frazier



**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com)  
**To:** [Ben Glassett](#); [Jill Nixon](#); [Suzanne Mildner](#); [Kristi Felbinger](#); [Dana Brown-Davis](#); [Executive](#); [NHanson@co.whatcom.wa.us](mailto:NHanson@co.whatcom.wa.us); [Cathy Halka](#)  
**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Wednesday, January 19, 2022 8:59:51 PM

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## Board and Commission Application

### Step 1

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#### Application for Appointment to Whatcom County Boards and Commissions

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##### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

---

Title	Ms.
First Name	Debra
Last Name	David
Today's Date	1/19/2022
Street Address	2115 F St
City	Bellingham
Zip	98225
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	360-961-7325
Secondary Telephone	Field not completed.
Email Address	pacificnwdeb@yahoo.com

---

### Step 2

---

1. Name of Board or	Justice Project Stakeholder Advisory Committee
---------------------	--

## Committee

---

Justice Project Stakeholder Advisory Committee	Citizen: Criminal Justice Advocate
--	------------------------------------

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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
--	-----

---

3. Which Council district do you live in?	District 2
---	------------

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4. Are you a US citizen?	Yes
--------------------------	-----

---

5. Are you registered to vote in Whatcom County?	Yes
--	-----

---

6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
--	----

---

7. Have you ever been a member of this Board/Commission?	No
--	----

---

8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
---	----

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You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<i>Field not completed.</i>
--	-----------------------------

the following questions

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9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I'm a Licensed Home Care Aide and work almost full-time providing personal care for two of my elementary school-age grandchildren who have developmental disabilities. Additionally, I'm a High School Graduate with two years of college during which I received a scholarship in journalism.

I worked Civil Service positions in Wisconsin most of my adult life, County and State. At age 18 I became a matron in the jail at the Sauk County Sheriff's Dept., and also worked as a Sheriff's Office dispatcher, in my hometown of Baraboo, WI.

I grew up in a law enforcement family, my late mother, Donna Burgess, was one of the first female deputy sheriffs in Wisconsin in the mid 1950's. She served as undersheriff and a number of other appointments/assignments until her untimely death in 1992 due to cancer. My late father Robert was also a reserve sheriff's deputy and worked in the jail as well as serving on the Sheriff's Posse.

During my years in State Civil service I excelled as clerical and administrative support and held positions within the: Department of Transportation; Transportation Commission; Division of Vocational Rehabilitation; Secretary of State's Office, Corporations Division under Douglas La Follette; Department of Health, Federal grant to Improve Emergency Medical Services for Children; UW-School of Veterinary Medicine – Dean's Office; and lastly the Department of Corrections – Administration, before moving to Bellingham, Washington in 1990 as a divorced mother of three.

Shortly after arriving in Bellingham I enrolled in Real Estate coursework, became licensed and began working with Century 21-DeBoer Realty. My new career came to an abrupt halt when I was diagnosed with relapsing, remitting Multiple Sclerosis in 1992. The course of the MS confined me to a wheelchair for more than a year at which time it was unknown if I would ever walk again.

During occasional periods of remission, I worked with an employment agency and was placed at BP Refinery, Ayers Consulting, Fiberglass Structural Engineering, Key Bank, and Whatcom Land Title. I trained for and was certified in Community Emergency Response Team program in 2000 through the WCSO. As a CERT member, I participated in a disaster drill at the Bellingham International Airport and another at the Intalco aluminum smelter shortly thereafter.

In 2008 during a hiring freeze set by Governor Christine Gregoire, I volunteered as an Administrative Assistant at Division of Vocational Rehabilitation in Bellingham.

In 2009 I was hired by Service Alternatives, a subcontractor of DVR, as a Community Support Specialist. As such I worked with disabled adults to facilitate inclusion in workplace and community activities. During my work with this population group I became aware of the dire need for advocacy and reform regarding the

criminal justice system.

In April 2010 I attended a public meeting held by the Whatcom County Re-Entry Coalition, a non-profit whose mission was to assist formerly incarcerated citizens successfully return to their communities. I soon joined this group, now known as the Restorative CommUnity Coalition, and have served on their Board for a decade.

---

10. Please describe why you're interested in serving on this board or commission

Thank you for considering my application. My interest in serving on the Justice Project Stakeholder's Advisory Committee is to give voice to the marginalized and under-served population groups, as well as seeking the greatest return on investment for taxpayers.

I've worked in public service for the majority of my adult life and I realize I've always been drawn to that which serves the higher, greater good.

In addition, my youngest adult daughter is a military veteran; she came home from Iraq with PTSD and is still struggling to stabilize as she co-parents three young children, two of which have developmental disabilities. I've seen first-hand the barriers to mental health care she faces. We can and must do better for our veterans and all our citizens struggling to live a healthy, balanced and productive life each and every day.

---

References (please include daytime telephone number):

Irene Morgan 360-354-2685  
Joy Gilfilen 360-739-7493

---

Signature of applicant:

Debra David

---

Place Signed / Submitted

Bellingham, WA

---

(Section Break)

---

Email not displaying correctly? [View it in your browser.](#)

**From:** [noreply@civicplus.com](mailto:noreply@civicplus.com)  
**To:** [Ben Glassett](#); [Jill Nixon](#); [Suzanne Mildner](#); [Kristi Felbinger](#); [Dana Brown-Davis](#); [Executive](#); [NHanson@co.whatcom.wa.us](mailto:NHanson@co.whatcom.wa.us); [Cathy Halka](#)  
**Subject:** Online Form Submittal: Board and Commission Application  
**Date:** Monday, January 31, 2022 12:35:32 PM

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## Board and Commission Application

### Step 1

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#### Application for Appointment to Whatcom County Boards and Commissions

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##### Public Statement

*THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the information provided will be available to the County Council, County Executive, and the public. All board and commission members are expected to be fair, impartial, and respectful of the public, County staff, and each other. Failure to abide by these expectations may result in revocation of appointment and removal from the appointive position.*

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Title	Mr.
First Name	Peter
Last Name	Frazier
Today's Date	1/31/2022
Street Address	263 Chuckanut Point Road
City	Bellingham
Zip	98229
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	Field not completed.
Primary Telephone	3602010390
Secondary Telephone	Field not completed.
Email Address	peter.frazier@gmail.com

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### Step 2

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1. Name of Board or	Justice Project Stakeholder Advisory Committee
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## Committee

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Justice Project Stakeholder Advisory Committee	Citizen: Criminal Justice Advocate
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2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
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3. Which Council district do you live in?	District 3
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4. Are you a US citizen?	Yes
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5. Are you registered to vote in Whatcom County?	Yes
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6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
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7. Have you ever been a member of this Board/Commission?	No
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8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
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You may attach a resume or detailed summary of experience, qualifications, & interest in response to	<i>Field not completed.</i>
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the following questions

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	Former Board Member of Kulshan Community Land Trust Former Board Member of RE Sources for Sustainable Communities Current Chair of Bellingham Tourism Commission Managing Partner of Heliotrope Hotel, Hotel Leo, Amendment 21 Committee Member of Downtown Bellingham Partnership Design Committee Former User Experience consultant to the technology industry
10. Please describe why you're interested in serving on this board or commission	<p>As a lifelong member of the Whatcom County and Bellingham communities and as a downtown property and business owner, I have been very active in understanding and organizing around our community's criminal justice, behavioral health, housing, homelessness, and economic development issues. I am in daily contact with business owners, property owners, City and County agencies, non-profit leaders, electeds, with an entrepreneur's pragmatic problem-solving and team-building approach.</p> <p>I am proud of the efforts our community has made recently in sheltering, development of the LEAD and GRACE programs, the soon to be implemented Alternative Response Team, and am interested in seeing the Justice Project through to completion.</p> <p>I have spent the last six months tightly focused on gaining a comprehensive understanding of these interwoven issues we face here in Whatcom County and am interested in working with others to solve them. I believe our community can become a model for others if we do this right. I would be honored to be considered for the board.</p>
References (please include daytime telephone number):	Seth Fleetwood - 360-778-8100, Dan Hammill 360-510-2528, Greg Winter 360-734-5121, Don Almer 360-815-1735, Hans Erchinger-Davis 360-733-5120, Erika Lautenbach 360-778-6000, Alicia Rule 360-318-5381
Signature of applicant:	Peter Frazier
Place Signed / Submitted	Bellingham WA

(Section Break)

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