

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
Barbara Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Carol Frazey
Satpal Sidhu

WHATCOM COUNTY COUNCIL

COMBINED
COMMITTEE AND
COUNCIL
AGENDAS FOR
FEBRUARY 26, 2019

INCLUDES AGENDAS
FOR THE FOLLOWING FEBRUARY 26 MEETINGS:

NATURAL RESOURCES COMMITTEE (9:30 A.M.)

FINANCE AND ADMINISTRATIVE SERVICE COMMITTEE (11 A.M.)

PUBLIC WORKS AND HEALTH COMMITTEE (1 P.M.)

CRIMINAL JUSTICE AND PUBLIC SAFETY (2 P.M.)

PLANNING AND DEVELOPMENT COMMITTEE (3 P.M.)

COUNCIL (7 P.M.)

NEXT COUNCIL MEETING DATE: MARCH 12, 2019

PLEASE VISIT THE COUNCIL'S NEW LEGISLATIVE INFORMATION CENTER
TO ACCESS ALL COUNCIL MEETING-RELATED INFORMATION

COMMITTEE AGENDAS

NATURAL RESOURCES COMMITTEE

Members: Barry Buchanan, Todd Donovan, Satpal Sidhu

9:30 a.m. Tuesday, February 26, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Committee Discussion and Recommendation to Council

1. AB2019-133 Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation

Pages 1 - 60

Other Business

Adjourn

FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE

Members: Tyler Byrd, Carol Frazey, Satpal Sidhu

11 a.m. Tuesday, February 26, 2019

Council Chambers, 311 Grand Avenue

Call To Order

County Executive's Report

Committee Discussion

1. AB2019-102 Discussion of proposed modifications to the Unified Fee Schedule to accommodate changes to the Aquatic Invasive Species (AIS) Ordinance WCC 2.27A (*public hearing on related ordinance scheduled for this evening under AB2019-106*)

Page 61

Committee Discussion and Recommendations to Council

1. AB2019-135 Request authorization for the County Executive to enter into a Grant Agreement between Whatcom County and the Department of Ecology (DOE) for Water Quality Combined Financial Assistance Grant Agreement WQC-2017-WhCoPw-00030 for the Agate Bay Stormwater Improvements project in the amount of \$552,548.62
Pages 62 - 105
2. AB2019-124 Ordinance amending the 2019 Whatcom County Budget, request no. 2, in the amount of \$4,901,742
Pages 106 - 121
3. AB2019-128 Ordinance amending courthouse building envelope project budget (as established through Ordinance 2014-085) third request, in the amount of \$4,700,000 for a total project budget of \$7,377,809
Pages 122 - 126

4. AB2019-137 Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions
Pages 127 - 159
5. AB2019-126 Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 2, in the amount of \$90,659 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 160 - 164

Other Business

Adjourn

PUBLIC WORKS AND HEALTH COMMITTEE

**Members: Barbara Brenner, Barry Buchanan, Carol Frazey
1 p.m. Tuesday, February 26, 2019
Council Chambers, 311 Grand Avenue**

Call To Order

Committee Discussion

1. AB2019-134 Discussion regarding an ordinance granting Deer Creek Water Association a franchise and the right, privilege, and authority thereunder to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across and through the franchise area to allow for the provision of water services
Pages 165 - 183

Other Business

Adjourn

CRIMINAL JUSTICE AND PUBLIC SAFETY COMMITTEE

**Members: Barry Buchanan, Tyler Byrd, Carol Frazey
2 p.m. Tuesday, February 26, 2019
Council Chambers, 311 Grand Avenue**

Call To Order

Committee Discussion

1. AB2019-043 Discussion of proposed ordinance repealing and replacing Whatcom County Code 1.28, Standards for Correctional Facilities
Pages 184 - 215

Other Business

Adjourn

PLANNING AND DEVELOPMENT COMMITTEE

Members: Barbara Brenner, Tyler Byrd, Todd Donovan

3 p.m. Tuesday, February 26, 2019

Council Chambers, 311 Grand Avenue

Call To Order

Committee Discussion

1. AB2019-044 Discussion regarding proposed amendments to Whatcom County Code Title 20, Zoning, and Title 23, Shoreline Management, related to vacation rental units
Pages 216 - 242

2. AB2019-077 Discussion with Planning and Development Services about potential zoning code amendments relating to the density credit program; discussion to include which amendments should be docketed for further review
Pages 243 - 281

Other Business

Adjourn

COUNCIL AGENDA

7 p.m. Tuesday, February 26, 2019
Council Chambers, 311 Grand Avenue

CALL TO ORDER
FLAG SALUTE
ROLL CALL

ANNOUNCEMENTS

If you will be handing out paperwork to councilmembers, please give one copy to the clerk for our office files. Thank you.

MINUTES CONSENT

1. MIN2019-017 Committee of the Whole for February 12, 2019
Pages 282 - 284
2. MIN2019-018 Regular County Council for February 12, 2019
Pages 285 - 297
3. MIN2019-019 Special County Council for February 15, 2019
Pages 298 - 301

PUBLIC HEARINGS

Audience members who wish to address the council during a public hearing are asked to sign up at the back of the room before the meeting begins. The council chair will ask those who have signed up to form a line at the podium. Each speaker should state his or her 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. When a large group of individuals supports the same position on an issue, we encourage the selection of one or two representatives to speak on behalf of the entire group.

1. AB2019-027 Ordinance amending Whatcom County Code 6.04 Animal Control, Chapter 6.04.020 Definitions and 6.04.031 Administration and Enforcement
Pages 302 - 313
2. AB2019-103 Ordinance proposing modifications to Whatcom County Code 2.27A, Aquatic Invasive Species (AIS)
Pages 314 - 323
3. AB2019-106 Ordinance amending the Unified Fee Schedule to accommodate changes to Whatcom County Code 2.27A, Aquatic Invasive Species
Pages 324 - 327
4. AB2019-121 Ordinance Amending Whatcom County Code Section 1.14 Correcting Certain Precinct Boundary Lines and Precinct Maps
Pages 328 - 340

OPEN SESSION (20 MINUTES)

During open session, audience members can speak to the council on any issue not scheduled for public hearing. Each speaker should state his or her 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.

OTHER ITEMS

(From Natural Resources Committee)

1. AB2019-133 Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation
Pages 1 - 60

(From Council Finance and Administrative Services Committee)

2. AB2019-135 Request authorization for the County Executive to enter into a Grant Agreement between Whatcom County and the Department of Ecology (DOE) for Water Quality Combined Financial Assistance Grant Agreement WQC-2017-WhCoPw-00030 for the Agate Bay Stormwater Improvements project in the amount of \$552,548.62
Pages 62 - 105
3. AB2019-124 Ordinance amending the 2019 Whatcom County Budget, request no. 2, in the amount of \$4,901,742
Pages 106 - 121
4. AB2019-128 Ordinance amending courthouse building envelope project budget (as established through Ordinance 2014-085) third request, in the amount of \$4,700,000 for a total project budget of \$7,377,809
Pages 122 - 126
5. AB2019-137 Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions
Pages 127 - 159
6. AB2019-126 Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 2, in the amount of \$90,659 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Pages 160 - 164

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2019-127 Appointment to the Whatcom County Planning Commission, applicant must reside in Council District 2, applicants: Robert Bartel, Ria Bordian, Bob Burr, James Hansen, Towhee Wean (the Planning Commission assists the Planning and Development Services Department in carrying out its duties, which include helping to prepare and execute the Comprehensive Plan and making recommendations for adoption of official controls and/or amendments)
Pages 341 - 361
2. AB2019-129 Appointment to the Sumas/Everson/Nooksack Flood Control Sub-Zone Advisory Committee - Applicant: Larry Mades (the committee is an integral part of the program reviewing the comprehensive plan for flood control)
Pages 362 - 363

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. AB2019-139 Request confirmation of Executive's appointment of Brian Rusk to the Whatcom County Purchase of Development Rights Oversight Committee
Pages 364 - 366

2. AB2019-143 Request confirmation of Executive's appointment of Rachel Arnold to the Whatcom County Marine Resources Committee
Pages 367 - 373
3. AB2019-144 Request confirmation of Executive's appointment of Patrick Alesse to the Whatcom County Bicycle-Pedestrian Advisory Committee
Pages 374 - 377

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. AB2019-147 Ordinance amending the 2019-2020 Whatcom County Budget, third request, in the amount of \$95,521
Pages 378 - 381
2. AB2019-145 Receipt of application for the Drayton Harbor Shellfish Protection District Committee, applicant: Julie Hirsch (the Committee advises the County Council on proposed actions and operations relating to the restoration of water quality in the Drayton Harbor Shellfish Protection District) (application deadline for any other applicants is 10 a.m. March 5, 2019)
Pages 382 - 390
3. AB2019-149 Receipt of application for the Surface Mining Advisory Committee, Environmental Consultant position - Applicant: Shannon Logan (the Committee advises the Planning Department and the Council on implementing a surface mining regulatory program consistent with the Comprehensive Plan) (application deadline for this appointment is 10:00 a.m. March 5, 2019)
Pages 391 - 396

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

ADJOURN

WHATCOM COUNTY COUNCIL ACTION TAKEN – February 12, 2019

CALL TO ORDER

Councilmembers Present: Brenner, Browne, Buchanan, Sidhu, Donovan, Frazey
Absent: Byrd

FLAG SALUTE

ANNOUNCEMENTS

MINUTES CONSENT

1. MIN2019-007 Committee of the Whole for January 15, 2019 - **Substitute Approved Consent 6-0**
2. MIN2019-008 Special Committee of the Whole (3PM) for January 15, 2019 - **Approved Consent 6-0**
3. MIN2019-009 Special Committee of the Whole (6:30PM) for January 15, 2019 - **Approved Consent 6-0**
4. MIN2019-010 Regular County Council for January 15, 2019 - **Approved Consent 6-0**
5. MIN2019-011 Regular County Council for January 29, 2019 - **Approved Consent 6-0**
6. MIN2019-012 Surface Water Work Session for January 22, 2019 - **Substitute Approved Consent 6-0**
7. MIN2019-013 Special Committee of the Whole for January 29, 2019 - **Approved Consent 6-0**
8. MIN2019-014 Committee of the Whole for January 29, 2019 - **Approved Consent 6-0**
9. MIN2019-015 Special Committee of the Whole for January 8, 2019 - **Approved Consent 6-0**
10. MIN2019-016 Board of Health for February 5, 2019 - **Approved Consent 6-0**

PUBLIC HEARINGS

1. AB2019-018 Ordinance adopting various minor amendments to Whatcom County Code Titles 20 (Zoning), 21 (Land Division Regulations), and 22 (Land Use and Development Procedures), making corrections, updates, and clarifications
Adopted 6-0 with Substitute Exhibit A
2. AB2019-073 Ordinance Regarding Temporary Installation of Stop Signs on Certain County Roads
Adopted 6-0
3. AB2019-074 Ordinance Establishing a Temporary Speed Limit Change for Birch Bay Drive
Adopted 6-0
4. AB2019-075 Ordinance Establishing Temporary One-Way Traffic on Birch Bay Drive
Adopted 6-0
5. AB2019-076 Ordinance Authorizing the Temporary Re-Opening of Cottonwood Drive at Morgan Drive to Vehicular Traffic
Failed 3-3, Frazey, Brenner, and Donovan opposed

OPEN SESSION

CONSENT AGENDA

1. AB2019-026 Request authorization for the County Executive to enter into a contract between Whatcom County and Birch Bay Chamber of Commerce to pay for the operations of the Birch Bay Visitor Center and to support the marketing of multi-day events, in the amount of \$100,000
Approved Consent 6-0
2. AB2019-104 Request authorization for the County Executive to enter into Amendment No. 3 to Whatcom County Contract No. 201802006 between Whatcom County and FCS Group for the amended amount of \$34,560
Approved Consent 6-0
3. AB2019-111 Request authorization for the County Executive to enter into an interlocal between Whatcom County and Lummi Nation to conduct natural resource monitoring and impact mitigation in the amount of \$120,000
Approved Consent 6-0

WHATCOM COUNTY COUNCIL ACTION TAKEN – February 12, 2019

4. AB2019-112 Request authorization for the County Executive to enter into a contract between Whatcom County and Herrera Environmental Consultants for Swift Creek Sediment Management Action Plan Implementation
Approved Consent 6-0
5. AB2019-116 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Children, Youth & Families for support of Perinatal Mood and Anxiety Disorders, in the amount of \$10,000
Approved Consent 6-0
6. AB2019-117 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and North Sound Behavioral Health Organization to support substance abuse prevention and mental health promotion programs in Whatcom County, in the amount of \$83,438
Approved Consent 6-0
7. AB2019-119 Request authorization for the County Executive to enter into a contract between Whatcom County and Whatcom Conservation District to provide a robust Community Wildfire Risk Reduction Program that consists of outreach, education and technical assistance to the Whatcom County communities most at risk from wildfire in Whatcom County
Approved Consent 6-0
8. AB2019-123 Resolution in the Matter of the Sale of Surplus Personal Property and Setting a Date for Public Hearing Thereon Pursuant to WCC 1.10
Withdrawn from the agenda
9. AB2019-125 Request authorization for the county Executive to enter into an interlocal between Whatcom County and Bellingham Technical College and the City of Bellingham for the administration of the EMT-Paramedic Training Program in the amount of \$56,000
Approved Consent 6-0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

10. AB2019-087 Request authorization for the County Executive to enter into an EDI Interlocal Loan and Grant Agreement between Whatcom County and Port of Bellingham in the amount of \$250,000
Approved 5-0, Donovan abstained
11. AB2019-105 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County Flood Control Zone and the City of Bellingham for management and operation of the joint City-County aquatic invasive species (AIS) boat inspection program at Lakes Whatcom and Samish, in the amount of \$123,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Approved 6-0
12. AB2019-107 Request Authorization for the County Executive to enter in to a cooperative agreement between The United States of America Army Corps of Engineers and Whatcom County Flood Control Zone District for rehabilitation of a non-federal flood control work in the amount of \$453,100 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Approved 6-0
13. AB2019-115 Request authorization for the County Executive to enter into a contract between Whatcom County Flood Control Zone District and Exact Scientific Services to provide water quality analytical testing services, in the amount of \$90,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Approved 6-0
14. AB2019-133 Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation
Held in Council
15. AB2019-136 Request approval to send letter requesting state funding to support the work of the Whatcom County Marine Resources Committee
Approved 6-0

WHATCOM COUNTY COUNCIL ACTION TAKEN – February 12, 2019

16. AB2019-137 Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions
Held in Council
17. AB2019-138 Resolution requesting that the County Executive provide staff resources and funding to coordinate with Whatcom County cities, social services agencies, and other providers to provide sufficient shelter capacity during cold weather periods and coordinate issuing hotel/motel accommodation vouchers
Amended and approved 6-0

INTRODUCTION ITEMS

1. AB2019-027 Ordinance amending Whatcom County Code 6.04 (Animal Control), Chapter 6.04.020 (Definitions) and 6.04.031 (Administration and Enforcement)
Introduced 6-0
2. AB2019-103 Ordinance proposing modifications to Whatcom County Code 2.27A, Aquatic Invasive Species (AIS)
Introduced 6-0
3. AB2019-106 Ordinance amending the Unified Fee Schedule to accommodate changes to Whatcom County Code 2.27A, Aquatic Invasive Species
Introduced 6-0
4. AB2019-121 Ordinance Amending Whatcom County Code Section 1.14 Correcting Certain Precinct Boundary Lines and Precinct Maps
Introduced 6-0
5. AB2019-124 Ordinance amending the 2019 Whatcom County Budget, request no. 2, in the amount of \$4,901,742
Introduced 6-0
6. AB2019-128 Ordinance amending courthouse building envelope project budget (as established through Ordinance 2014-085) third request, in the amount of \$4,700,000 for a total project budget of \$7,377,809
Introduced 6-0
7. AB2019-127 Receipt of application for the Whatcom County Planning Commission, applicant: Bob Burr (committee assists the Planning and Development Services Department in carrying out its duties, which include helping to prepare and execute the comprehensive plan and making recommendations for adoption of official controls and/or amendments) (application deadline for any other applicants is 10:00 a.m. February 19, 2019)
Introduced 6-0
8. AB2019-129 Receipt of application for the Sumas/Everson/Nooksack Flood Control Sub-Zone Advisory Committee - applicant: Larry Mades (the committee is an integral part of the program reviewing the comprehensive plan for flood control) (application for deadline for any other applicants is 10 a.m. February 19, 2019)
Introduced 6-0
9. AB2019-131 Resolution Authorizing the Sale of Surplus Personal Property Pursuant to WCC 1.10
Withdrawn from the agenda
10. AB2019-126 Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 2, in the amount of \$90,659 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)
Introduced 6-0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

ADJOURN

The next regular Council meeting is scheduled for 7:00 p.m. Tuesday, February 26, 2019 in the Council Chambers, 311 Grand Avenue, Bellingham



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-133

File ID: AB2019-133 **Version:** 1 **Status:** Agenda Ready

File Created: 02/11/2019 **Entered by:** DBrown@co.whatcom.wa.us

Department: Council Office **File Type:** Resolution

First Assigned to: Council Natural Resources Committee

Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	HELD IN COUNCIL	Council

Attachments: Resolution - Orca Recovery Local Government, Related House and Senate Bills - Orca Recovery Resolution

Final Action:
Enactment Date:
Enactment #:

RESOLUTION NO. _____

**REQUESTING SUPPORT FOR WASHINGTON STATE HOUSE AND SENATE
BILLS RELATED TO: POLLUTION PREVENTION; INCREASING HABITAT AND
FISH ABUNDANCE; PROTECTION OF SOUTHERN RESIDENT ORCA WHALES
FROM VESSELS; AND IMPROVING THE SAFETY OF OIL TRANSPORTATION**

WHEREAS, in March 2018, Governor Inslee issued Executive Order 18-02 which directed state agencies to take immediate actions to help the endangered southern resident orca population and established the Southern Resident Orca Task Force to develop a long-term plan for recovering orcas; and

WHEREAS, the Task Force includes nearly 50 members representing a wide range of sectors including state agencies, the legislature, and state, tribal, federal and local governments, as well as private sector and non-profit organizations; and

WHEREAS, southern resident orcas primarily consume Chinook salmon, bioaccumulate toxics in their blubber, and communicate underwater with members of the pod; and

WHEREAS, there are currently 74 southern resident orcas, down from a healthy population of about 200; and

WHEREAS, the orcas are struggling to survive as a result of declining Chinook and other salmon runs, high-mortality rates due to relying upon their toxic blubber reserves to sustain them, and increasing vessel traffic impairing their ability to communicate amongst themselves while they hunt; and

WHEREAS, the Southern Resident Orca Task Force focused on addressing the above three key problems: prey availability (through habitat, hydropower, hatcheries, harvest, and forage fish), toxics in the water, and noise disturbance from boats and vessels; and

WHEREAS, during the Southern Resident Orca Task Force’s deliberations last summer, Tahlequah (J35) carried her dead calf for 17 days around the Salish Sea in mourning and drew attention to the endangered population from around the world; and

WHEREAS, the declining population of the southern resident orcas is an indication of noise pollution interfering with the Orca’s sonar used to find prey, the poor health of our salmon runs and the environment; and

1
2 **WHEREAS**, on November 16, 2018, the Southern Resident Orca Task Force
3 released their final 36 recommendations to Governor Inslee; and
4

5 **WHEREAS**, Governor Inslee and the Legislature have introduced the following
6 pieces of legislation based on recommendations from the Southern Resident Orca Task
7 Force:
8

- 9 • HB 1194 preventing toxic pollution that affects public health or our environment.
- 10 • HB 1579, Implementing recommendations of the southern resident killer whale
11 task force related to increasing chinook abundance, and SB 5580, implementing
12 recommendations of the southern resident killer whale task force related to
13 increasing habitat and forage fish abundance.
- 14 • HB 1580 and SB 5577, concerning the protection of southern resident orca
15 whales from vessels.
- 16 • HB 1578 and SB 5578, Reducing threats to southern resident killer whales by
17 improving the safety of oil transportation.
18

19 **NOW, THEREFORE BE IT RESOLVED** that the Whatcom County Council will
20 forward this resolution in support of the above legislation to our 40th and 42nd
21 Legislators and members of the Senate Agriculture, Water, Natural Resources & Parks,
22 Senate Environment, Energy & Technology, House Environment & Energy, and House
23 Rural Development, Agriculture, & Natural Resources Committees.
24

25 **ADOPTED** this ____ day of _____, 2019.
26

27
28 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

29
30
31 _____
Dana Brown-Davis, Clerk of the Council

31 _____
Rud Browne, Council Chair

32
33
34 WHATCOM COUNTY EXECUTIVE
35 APPROVED AS TO FORM:
36
37

38 _____
39 Civil Deputy Prosecutor
40
41
42
43

HOUSE BILL 1194

State of Washington

66th Legislature

2019 Regular Session

By Representatives Doglio, Fitzgibbon, Slatter, Fey, Peterson, Hudgins, Lekanoff, Macri, Shewmake, Dolan, Jinkins, Pollet, Goodman, Robinson, and Stanford

Read first time 01/16/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to preventing toxic pollution that affects public
2 health or the environment; amending RCW 70.240.040 and 43.21B.110;
3 adding a new chapter to Title 70 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Consumer product" means any item, including any component
9 parts and packaging, sold for residential or commercial use.

10 (2) "Department" means the department of ecology.

11 (3) "Director" means the director of the department.

12 (4) "Manufacturer" means any person, firm, association,
13 partnership, corporation, governmental entity, organization, or joint
14 venture that produces a product or is an importer or domestic
15 distributor of a product sold or offered for sale in or into the
16 state.

17 (5) "Organohalogen" means a class of chemicals that includes any
18 chemical containing one or more halogen elements bonded to carbon.

19 (6) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS
20 chemicals" means a class of fluorinated organic chemicals containing
21 at least one fully fluorinated carbon atom.

- 1 (7) "Phenolic compounds" means alkylphenol ethoxylates and
2 bisphenols.
- 3 (8) "Phthalates" means synthetic chemical esters of phthalic
4 acid.
- 5 (9) "Polychlorinated biphenyls" or "PCBs" means chemical forms
6 that consist of two benzene rings joined together and containing one
7 to ten chlorine atoms attached to the benzene rings.
- 8 (10) "Priority chemical" means a chemical or chemical class used
9 as, used in, or put in a consumer product including:
- 10 (a) Perfluoroalkyl and polyfluoroalkyl substances;
11 (b) Phthalates;
12 (c) Organohalogen flame retardants;
13 (d) Flame retardants, as identified by the department under
14 chapter 70.240 RCW;
15 (e) Phenolic compounds;
16 (f) Polychlorinated biphenyls; or
17 (g) A chemical identified by the department as a priority
18 chemical under section 2 of this act.
- 19 (11) "Safer alternative" means an alternative that is less
20 hazardous to humans or the environment than the existing chemical or
21 chemical process. A safer alternative to a particular chemical may
22 include a chemical substitute or a change in materials or design that
23 eliminates the need for a chemical alternative.
- 24 (12) "Sensitive population" means a category of people that is
25 identified by the department that may be or is disproportionately or
26 more severely affected by priority chemicals, such as:
- 27 (a) Men and women of childbearing age;
28 (b) Infants and children;
29 (c) Pregnant women;
30 (d) Communities that are highly impacted by toxic chemicals;
31 (e) Persons with occupational exposure; and
32 (f) The elderly.
- 33 (13) "Sensitive species" means a species or grouping of animals
34 that is identified by the department that may be or is
35 disproportionately or more severely affected by priority chemicals,
36 such as:
- 37 (a) Southern resident killer whales;
38 (b) Salmon; and
39 (c) Forage fish.

1 NEW SECTION. **Sec. 2.** Every five years, and consistent with the
2 timeline established in section 5 of this act, the department must
3 identify at least five priority chemicals that meet at least one of
4 the following:

5 (1) The chemical or a member of a class of chemicals are
6 identified by the department as a:

7 (a) High priority chemical of high concern for children under
8 chapter 70.240 RCW; or

9 (b) Persistent, bioaccumulative toxin under chapter 70.105 RCW;

10 (2) The chemical or members of a class of chemicals are
11 regulated:

12 (a) In consumer products under chapter 70.240, 70.76, 70.95G,
13 70.280, 70.285, 70.95M, or 70.75A RCW; or

14 (b) As a hazardous substance under chapter 70.105 or 70.105D RCW;
15 or

16 (3) The department determines the chemical or members of a class
17 of chemicals are a concern for sensitive populations and sensitive
18 species after considering the following factors:

19 (a) A chemical's or members of a class of chemicals' hazard
20 traits or environmental or toxicological endpoints;

21 (b) A chemical's or members of a class of chemicals' aggregate
22 effects;

23 (c) A chemical's or members of a class of chemicals' cumulative
24 effects with other chemicals with the same or similar hazard traits
25 or environmental or toxicological endpoints;

26 (d) A chemical's or members of a class of chemicals'
27 environmental fate;

28 (e) The potential for a chemical or members of a class of
29 chemicals to degrade, form reaction products, or metabolize into
30 another chemical or a chemical that exhibits one or more hazard
31 traits or environmental or toxicological endpoints, or both;

32 (f) The potential for the chemical or class of chemicals to
33 contribute to or cause adverse health or environmental impacts;

34 (g) The chemical's or class of chemicals' potential impact on
35 sensitive populations, sensitive species, or environmentally
36 sensitive habitats;

37 (h) Potential exposures to the chemical or members of a class of
38 chemicals based on:

39 (i) Reliable information regarding potential exposures to the
40 chemical or members of a class of chemicals; and

1 (ii) Reliable information demonstrating occurrence, or potential
2 occurrence, of multiple exposures to the chemical or members of a
3 class of chemicals.

4 NEW SECTION. **Sec. 3.** (1) Every five years, and consistent with
5 the timeline established in section 5 of this act, the department
6 shall identify priority consumer products that are a significant
7 source of or use of priority chemicals.

8 (2) When identifying priority consumer products under this
9 section, the department must consider, at a minimum, the following
10 criteria:

11 (a) The estimated volume of a priority chemical or priority
12 chemicals added to, used in, or present in the consumer product;

13 (b) The estimated volume or number of units of the consumer
14 product sold or present in the state;

15 (c) The potential for exposure to priority chemicals by sensitive
16 populations or sensitive species when the consumer product is used,
17 disposed of, or has decomposed;

18 (d) The potential for priority chemicals to be found in the
19 outdoor environment, with priority given to surface water,
20 groundwater, marine waters, sediments, and other ecologically
21 sensitive areas, when the consumer product is used, disposed of, or
22 has decomposed;

23 (e) If another state or nation has identified or taken regulatory
24 action to restrict or otherwise regulate the priority chemical in the
25 consumer product; and

26 (f) Whether the department has already identified the consumer
27 product in a chemical action plan completed under chapter 70.105 RCW
28 as a source of a priority chemical or other reports or information
29 gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M,
30 or 70.75A RCW.

31 (3) The department is not required to give equal weight to each
32 of the criteria in subsection (2)(a) through (f) of this section when
33 identifying priority consumer products that use or are a significant
34 source of priority chemicals.

35 (4) To assist with identifying priority consumer products under
36 this section and making determinations as authorized under section 4
37 of this act, the department may request a manufacturer to submit a
38 notice to the department that contains the information specified in
39 RCW 70.240.040 (1) through (6) or other information relevant to

1 subsection (2)(a) through (d) of this section. The manufacturer must
2 provide the notice to the department no later than six months after
3 receipt of such a demand by the department.

4 (5)(a) Except as provided in (b) of this subsection, the
5 department may not identify the following as priority consumer
6 products under this section:

7 (i) Food or beverages;

8 (ii) Tobacco products;

9 (iii) Drug or biological products regulated by the United States
10 food and drug administration;

11 (iv) Finished products regulated by the federal aviation
12 administration; and

13 (v) Chemical products used to produce an agricultural commodity,
14 as defined in RCW 17.21.020.

15 (b) The department may identify the packaging of products listed
16 in (a) of this subsection as priority consumer products.

17 NEW SECTION. **Sec. 4.** (1) Every five years, and consistent with
18 the timeline established in section 5 of this act, the department
19 must determine regulatory actions to increase transparency and to
20 reduce the use of priority chemicals in priority consumer products.
21 The department may:

22 (a) Determine that no regulatory action is currently required;

23 (b) Require a manufacturer to provide notice of the use of a
24 priority chemical or class of priority chemicals consistent with RCW
25 70.240.040; or

26 (c) Restrict or prohibit the manufacture, wholesale,
27 distribution, sale, retail sale, or use, or any combination thereof,
28 of a priority chemical or class of priority chemicals in a consumer
29 product.

30 (2)(a) The department may order a manufacturer to submit
31 information consistent with section 3(4) of this act.

32 (b) The department may require a manufacturer to provide:

33 (i) A list of products containing priority chemicals;

34 (ii) Product ingredients;

35 (iii) Information regarding exposure and chemical hazard; and

36 (iv) A description of the amount and the function of the high
37 priority chemical in the product.

1 (3) The department may restrict or prohibit a priority chemical
2 or members of a class of priority chemicals in a priority consumer
3 product when it determines:

4 (a) Safer alternatives are feasible and available;

5 (b) The priority chemical or members of a class of priority
6 chemicals is not functionally necessary in the priority consumer
7 product;

8 (c) Another state or nation has restricted the priority chemical
9 or members of a class of priority chemicals in a product; or

10 (d) It is necessary to protect the health of sensitive
11 populations or sensitive species.

12 (4) A restriction or prohibition on a priority chemical in a
13 consumer product may include exemptions or exceptions, including
14 exemptions to address existing stock of a product in commerce at the
15 time that a restriction takes effect.

16 NEW SECTION. **Sec. 5.** (1)(a) By June 1, 2020, and consistent
17 with section 3 of this act, the department shall identify priority
18 consumer products that are a significant source of or use of priority
19 chemicals specified in section 1(10) (a) through (f) of this act.

20 (b) By June 1, 2022, and consistent with section 4 of this act,
21 the department must determine regulatory actions regarding the
22 priority chemicals and priority consumer products identified in (a)
23 of this subsection.

24 (c) By June 1, 2023, the department must adopt rules to implement
25 regulatory actions determined under (b) of this subsection.

26 (2)(a) By June 1, 2024, and every five years thereafter, the
27 department shall identify at least five priority chemicals specified
28 in section 1(10) (a) through (g) of this act that are identified
29 consistent with section 2 of this act.

30 (b) By June 1, 2025, and every five years thereafter, the
31 department must identify priority consumer products that contain
32 priority chemicals, consistent with section 3 of this act.

33 (c) By June 1, 2027, and every five years thereafter, the
34 department must determine regulatory actions for the priority
35 chemicals in priority consumer products identified under (b) of this
36 subsection, consistent with section 4 of this act.

37 (d) By June 1, 2028, and every five years thereafter, the
38 department must adopt rules to implement regulatory actions
39 identified under (c) of this subsection.

1 (3) When identifying priority chemicals and priority consumer
2 products under this chapter, the department must notify the public of
3 the selection, the basis for the selection, and a draft schedule for
4 making determinations. The notice must be published in the Washington
5 State Register. The department shall provide the public with an
6 opportunity for review and comment of the regulatory determinations.

7 NEW SECTION. **Sec. 6.** (1) A manufacturer that submits
8 information or records to the department under this chapter may
9 request that the information or records be made available only for
10 the confidential use of the department, the director, or the
11 appropriate division of the department. The director shall give
12 consideration to the request and if this action is not detrimental to
13 the public interest and is otherwise within accord with the policies
14 and purposes of chapter 43.21A RCW, the director must grant the
15 request for the information to remain confidential as authorized in
16 RCW 43.21A.160. Under the procedures established under RCW
17 43.21A.160, the director must keep confidential any records furnished
18 by a manufacturer under this chapter that relate to proprietary
19 manufacturing processes or chemical formulations used in products or
20 processes.

21 (2) For records or other information furnished to the department
22 by a federal agency on the condition that the information be afforded
23 the same confidentiality protections as under federal law, the
24 director may determine that the information or records be available
25 only for the confidential use of the director, the department, or the
26 appropriate division of the department. All such records and
27 information are exempt from public disclosure. The director is
28 authorized to enter into an agreement with the federal agency
29 furnishing the records or information to ensure the confidentiality
30 of the records or information.

31 NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement
32 of this chapter, a rule adopted under this chapter, or an order
33 issued under this chapter, is subject to a civil penalty not to
34 exceed five thousand dollars for each violation in the case of a
35 first offense. Manufacturers who are repeat violators are subject to
36 a civil penalty not to exceed ten thousand dollars for each repeat
37 offense.

1 (2) Any penalty provided for in this section, and any order
2 issued by the department under this chapter, may be appealed to the
3 pollution control hearings board.

4 (3) All penalties collected under this chapter shall be deposited
5 in the state toxics control account created in RCW 70.105D.070.

6 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as
7 necessary for the purpose of implementing, administering, and
8 enforcing this chapter.

9 (2) The department must adopt rules to implement the
10 determinations of regulatory actions specified in section 4(1) (b) or
11 (c) of this act.

12 **Sec. 9.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to
13 read as follows:

14 (~~Beginning six months after the department has adopted rules~~
15 ~~under section 8(5) of this act,~~) A manufacturer of a children's
16 product or a consumer product containing a priority chemical subject
17 to a rule adopted to implement a determination made consistent with
18 section 4(1)(b) of this act, or a trade organization on behalf of its
19 member manufacturers, shall provide notice to the department that the
20 manufacturer's product contains a high priority chemical or a
21 priority chemical identified under chapter 70.--- RCW (the new
22 chapter created in section 12 of this act). The notice must be filed
23 annually with the department and must include the following
24 information:

25 (1) The name of the chemical used or produced and its chemical
26 abstracts service registry number;

27 (2) A brief description of the product or product component
28 containing the substance;

29 (3) A description of the function of the chemical in the product;

30 (4) The amount of the chemical used in each unit of the product
31 or product component. The amount may be reported in ranges, rather
32 than the exact amount;

33 (5) The name and address of the manufacturer and the name,
34 address, and phone number of a contact person for the manufacturer;
35 and

36 (6) Any other information the manufacturer deems relevant to the
37 appropriate use of the product.

1 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
2 read as follows:

3 (1) The hearings board shall only have jurisdiction to hear and
4 decide appeals from the following decisions of the department, the
5 director, local conservation districts, the air pollution control
6 boards or authorities as established pursuant to chapter 70.94 RCW,
7 local health departments, the department of natural resources, the
8 department of fish and wildlife, the parks and recreation commission,
9 and authorized public entities described in chapter 79.100 RCW:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
12 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
13 90.56.310, 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act,
16 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70.95.300.

25 (d) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (e) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70.95J.080.

30 (f) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70.95.205.

34 (g) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW.

14 (l) Decisions of the department of natural resources that are
15 reviewable under RCW 78.44.270.

16 (m) Decisions of an authorized public entity under RCW 79.100.010
17 to take temporary possession or custody of a vessel or to contest the
18 amount of reimbursement owed that are reviewable by the hearings
19 board under RCW 79.100.120.

20 (2) The following hearings shall not be conducted by the hearings
21 board:

22 (a) Hearings required by law to be conducted by the shorelines
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW
25 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
26 90.44.180.

27 (c) Appeals of decisions by the department under RCW 90.03.110
28 and 90.44.220.

29 (d) Hearings conducted by the department to adopt, modify, or
30 repeal rules.

31 (3) Review of rules and regulations adopted by the hearings board
32 shall be subject to review in accordance with the provisions of the
33 administrative procedure act, chapter 34.05 RCW.

34 NEW SECTION. **Sec. 11.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 12.** Sections 1 through 8 and 13 of this act
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 13.** This act may be known and cited as the
4 pollution prevention for healthy people and Puget Sound act.

--- **END** ---

HOUSE BILL 1579

State of Washington**66th Legislature****2019 Regular Session**

By Representatives Fitzgibbon, Peterson, Lekanoff, Doglio, Macri, Stonier, Tharinger, Stanford, Jinkins, Robinson, Pollet, Valdez, Cody, Kloba, Slatter, Frame, and Davis; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to implementing recommendations of the southern
2 resident killer whale task force related to increasing chinook
3 abundance; amending RCW 77.08.020, 77.32.010, and 43.21B.110; adding
4 new sections to chapter 77.55 RCW; creating a new section; repealing
5 RCW 77.55.141 and 77.55.291; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 population of southern resident killer whales has declined in recent
9 years and currently stands at a thirty-year low of seventy-four
10 animals.

11 (2) The governor convened the southern resident killer whale task
12 force after the 2018 legislative session to study and identify
13 actions that could be taken to help sustain and recover this
14 important species. In the course of its work, the task force found
15 that chinook salmon compose the largest portion of the whales' diet,
16 and are therefore critical to the recovery of the species. Further,
17 several runs of chinook salmon in Washington state are listed under
18 the federal endangered species act, making chinook recovery all the
19 more urgent.

20 (3) The task force identified four overarching southern resident
21 killer whale recovery goals and adopted several recommendations for

1 specific actions under each goal. Goal one identified by the task
2 force is to increase chinook abundance, and actions under that goal
3 relate to habitat protection, protection of chinook prey, such as
4 forage fish, and reducing impacts of nonnative chinook predators.

5 (4) To address the need identified by the task force to increase
6 chinook abundance, the legislature intends to take initial, important
7 steps consistent with recommendations made by the governor's southern
8 resident killer whale task force.

9 **Sec. 2.** RCW 77.08.020 and 1989 c 218 s 2 are each amended to
10 read as follows:

11 (1) As used in this title or rules of the commission, "game fish"
12 means those species of the class Osteichthyes that shall not be
13 fished for except as authorized by rule of the commission and
14 includes:

15	Scientific Name	Common Name
16	Ambloplites rupestris	rock bass
17	Coregonus clupeaformis	lake white fish
18	Ictalurus furcatus	blue catfish
19	Ictalurus melas	black bullhead
20	Ictalurus natalis	yellow bullhead
21	Ictalurus nebulosus	brown bullhead
22	((Ictalurus punctatus	channel catfish))
23	Lepomis cyanellus	green sunfish
24	Lepomis gibbosus	pumpkinseed
25	Lepomis gulosus	warmouth
26	Lepomis macrochirus	bluegill
27	Lota lota	burbot or freshwater ling
28	((Micropterus dolomieu	smallmouth bass
29	Micropterus salmoides	largemouth bass))
30	Oncorhynchus nerka (in its	kokanee or silver trout
31	landlocked form)	
32	Perca flavescens	yellow perch
33	Pomixis annularis	white crappie
34	Pomixis nigromaculatus	black crappie
35	Prosopium williamsoni	mountain white fish
36	Oncorhynchus aquabonita	golden trout

1	Oncorhynchus clarkii	cutthroat trout
2	Oncorhynchus mykiss	rainbow or steelhead trout
3	Salmo salar (in its	Atlantic salmon
4	landlocked form)	
5	Salmo trutta	brown trout
6	Salvelinus fontinalis	eastern brook trout
7	Salvelinus malma	Dolly Varden trout
8	Salvelinus namaycush	lake trout
9	((Stizostedion vitreum	Walleye))
10	Thymallus arcticus	arctic grayling

11 (2) Private sector cultured aquatic products as defined in RCW
12 15.85.020 are not game fish.

13 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to
14 read as follows:

15 (1) Except as otherwise provided in this chapter or department
16 rule, a recreational license issued by the director is required to
17 hunt, fish, or take wildlife or seaweed. A recreational fishing or
18 shellfish license is not required for carp(~~(, smelt,)~~) and crawfish,
19 and a hunting license is not required for bullfrogs.

20 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
21 79A.80.040 is required to park or operate a motor vehicle on a
22 recreation site or lands, as defined in RCW 79A.80.010.

23 (3) The commission may, by rule, indicate that a fishing permit
24 issued to a nontribal member by the Colville Tribes shall satisfy the
25 license requirements in subsection (1) of this section on the waters
26 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and
27 that a Colville Tribes tribal member identification card shall
28 satisfy the license requirements in subsection (1) of this section on
29 all waters of Lake Rufus Woods.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55
31 RCW to read as follows:

32 (1) When the department determines that a violation of this
33 chapter, or of any of the rules that implement this chapter, has
34 occurred or is about to occur, it shall first attempt to achieve
35 voluntary compliance. The department shall offer information and
36 technical assistance to the project proponent, identifying one or

1 more means to accomplish the project proponent's purposes within the
2 framework of the law. The department shall provide a reasonable
3 timeline to achieve voluntary compliance that takes into
4 consideration factors specific to the violation, such as the
5 complexity of the hydraulic project, the actual or potential harm to
6 fish life or fish habitat, and the environmental conditions at the
7 time.

8 (2) If a person violates this chapter, or any of the rules that
9 implement this chapter, or deviates from a permit, the department may
10 issue a notice of correction in accordance with chapter 43.05 RCW, a
11 notice of violation in accordance with chapter 43.05 RCW, a stop work
12 order, a notice to comply, or a notice of civil penalty as authorized
13 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

14 (3) For purposes of this section, the term "project proponent"
15 means a person who has applied for a hydraulic project approval, a
16 person identified as an authorized agent on an application for a
17 hydraulic project approval, a person who has obtained a hydraulic
18 project approval, or a person who undertakes a hydraulic project
19 without a hydraulic project approval.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55
21 RCW to read as follows:

22 (1) The department may serve upon a project proponent a stop work
23 order, which is a final order of the department, if:

24 (a) There is any violation of this chapter or of the rules
25 implementing this chapter;

26 (b) There is a deviation from the hydraulic project approval; or

27 (c) Immediate action is necessary to prevent continuation of or
28 to avoid more than minor harm to fish life or fish habitat.

29 (2) (a) The stop work order must set forth:

30 (i) The specific nature, extent, and time of the violation,
31 deviation, harm, or potential harm;

32 (ii) The specific course of action needed to correct or prevent a
33 continuing violation, deviation, harm, or potential harm; and

34 (iii) The right to an appeal.

35 (b) A stop work order may require that any project proponent stop
36 all work connected with the violation until corrective action is
37 taken.

38 (3) Within five business days of issuing the stop work order, the
39 department shall mail a copy of the stop work order to the last known

1 address of any project proponent, to the last known address of the
2 owner of the land on which the hydraulic project is located, and to
3 the local jurisdiction in which the hydraulic project is located.
4 Substantial compliance with these mailing requirements is deemed
5 satisfactory compliance with this subsection. For purposes of this
6 subsection, "substantial compliance" means mailing to the last known
7 address of the owner of the land on which the hydraulic project is
8 located, to the local jurisdiction in which the hydraulic project is
9 located, and to the last known address of any project proponent who
10 has applied for a hydraulic project approval, who is identified as an
11 authorized agent on an application for a hydraulic project approval,
12 or who has obtained a hydraulic project approval.

13 (4) Issuance of a stop work order may be informally appealed by a
14 project proponent who was served with the stop work order or who
15 received a copy of the stop work order from the department, or by the
16 owner of the land on which the hydraulic project is located, to the
17 department within thirty days from the date of receipt of the stop
18 work order. Requests for informal appeal must be filed in the form
19 and manner prescribed by the department by rule. A stop work order
20 that has been informally appealed to the department is appealable to
21 the board within thirty days from the date of receipt of the
22 department's decision on the informal appeal.

23 (5) The project proponent who was served with the stop work order
24 or who received a copy of the stop work order from the department, or
25 the owner of the land on which the hydraulic project is located, may
26 commence an appeal to the board within thirty days from the date of
27 receipt of the stop work order. If such an appeal is commenced, the
28 proceeding is an adjudicative proceeding under the administrative
29 procedure act, chapter 34.05 RCW. The recipient of the stop work
30 order must comply with the order of the department immediately upon
31 being served, but the board may stay, modify, or discontinue the
32 order, upon motion, under such conditions as the board may impose.

33 (6) For the purposes of this section, "project proponent" has the
34 same meaning as defined in section 4(3) of this act.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
36 RCW to read as follows:

37 (1)(a) If a violation of this chapter or of the rules
38 implementing this chapter, a deviation from the hydraulic project
39 approval, damage to fish life or fish habitat, or potential damage to

1 fish life or fish habitat, has occurred and the department determines
2 that a stop work order is unnecessary, the department may issue and
3 serve upon a project proponent a notice to comply, which must clearly
4 set forth:

5 (i) The nature, extent, date, and time of the violation;

6 (ii) Any necessary corrective action; and

7 (iii) The right to an appeal.

8 (b) The notice to comply may require that any project proponent
9 take corrective action to prevent, correct, or compensate for adverse
10 impacts to fish life or fish habitat.

11 (2) Within five business days of issuing the notice to comply,
12 the department shall mail a copy of the notice to comply to the last
13 known address of any project proponent, to the last known address of
14 the owner of the land on which the hydraulic project is located, and
15 to the local jurisdiction in which the hydraulic project is located.
16 Substantial compliance with these mailing requirements is deemed
17 satisfactory compliance with this subsection. For purposes of this
18 subsection, "substantial compliance" means mailing to the last known
19 address of the owner of the land on which the hydraulic project is
20 located, to the local jurisdiction in which the hydraulic project is
21 located, and to the last known address of any project proponent who
22 has applied for a hydraulic project approval, who is identified as an
23 authorized agent on an application for a hydraulic project approval,
24 or who has obtained a hydraulic project approval.

25 (3) Issuance of a notice to comply may be informally appealed by
26 a project proponent who was served with the notice to comply or who
27 received a copy of the notice to comply from the department, or by
28 the owner of the land on which the hydraulic project is located, to
29 the department within thirty days from the date of receipt of the
30 notice to comply. Requests for informal appeal must be filed in the
31 form and manner prescribed by the department by rule. A notice to
32 comply that has been informally appealed to the department is
33 appealable to the board within thirty days from the date of receipt
34 of the department's decision on the informal appeal.

35 (4) The project proponent who was served with the notice to
36 comply, the project proponent who received a copy of the notice to
37 comply from the department, or the owner of the land on which the
38 hydraulic project is located may commence an appeal to the board
39 within thirty days from the date of receipt of the notice to comply.
40 If such an appeal is commenced, the proceeding is an adjudicative

1 proceeding under the administrative procedure act, chapter 34.05 RCW.
2 The recipient of the notice to comply must comply with the notice to
3 comply immediately upon being served, but the board may stay, modify,
4 or discontinue the notice to comply, upon motion, under such
5 conditions as the board may impose.

6 (5) For the purposes of this section, "project proponent" has the
7 same meaning as defined in section 4(3) of this act.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55
9 RCW to read as follows:

10 (1) The department may levy civil penalties of up to ten thousand
11 dollars for every violation of this chapter or of the rules that
12 implement this chapter. Each and every violation is a separate and
13 distinct civil offense.

14 (2) The penalty provided must be imposed by notice in writing by
15 the department, provided either by certified mail or by personal
16 service, to the person incurring the penalty and to the local
17 jurisdiction in which the hydraulic project is located, describing
18 the violation. The civil penalty notice must set forth:

- 19 (a) The basis for the penalty;
- 20 (b) The amount of the penalty; and
- 21 (c) The right of the person incurring the penalty to appeal the
22 civil penalty.

23 (3) (a) Except as provided in (b) of this subsection, any person
24 incurring any penalty under this chapter may appeal the penalty to
25 the board pursuant to chapter 34.05 RCW. Appeals must be filed within
26 thirty days from the date of receipt of the notice of civil penalty
27 in accordance with RCW 43.21B.230.

28 (b) Issuance of a civil penalty may be informally appealed by the
29 person incurring the penalty to the department within thirty days
30 from the date of receipt of the notice of civil penalty. Requests for
31 informal appeal must be filed in the form and manner prescribed by
32 the department by rule. A civil penalty that has been informally
33 appealed to the department is appealable to the board within thirty
34 days from the date of receipt of the department's decision on the
35 informal appeal.

36 (4) The penalty imposed becomes due and payable thirty days after
37 receipt of a notice imposing the penalty unless an appeal is filed.
38 Whenever an appeal of any penalty incurred under this chapter is
39 filed, the penalty becomes due and payable only upon completion of

1 all review proceedings and the issuance of a final order confirming
2 the penalty in whole or in part. When the penalty becomes past due,
3 it is also subject to interest at the rate allowed by RCW 43.17.240
4 for debts owed to the state.

5 (5) If the amount of any penalty is not paid within thirty days
6 after it becomes due and payable, the attorney general, upon the
7 request of the director, shall bring an action in the name of the
8 state of Washington in the superior court of Thurston county or of
9 the county in which such a violation occurred, to recover the
10 penalty. In all such actions, the rules of civil procedures and the
11 rules of evidence are the same as in an ordinary civil action. The
12 department is also entitled to recover reasonable attorneys' fees and
13 costs incurred in connection with the penalty recovered under this
14 section. All civil penalties received or recovered by state agency
15 action for violations as prescribed in subsection (1) of this section
16 must be deposited into the state's general fund. The department is
17 authorized to retain any attorneys' fees and costs it may be awarded
18 in connection with an action brought to recover a civil penalty
19 issued pursuant to this section.

20 (6) The department shall adopt by rule a penalty schedule to be
21 effective by January 1, 2020. The penalty schedule must be developed
22 in consideration of the following:

- 23 (a) Previous violation history;
- 24 (b) Severity of the impact on fish life and fish habitat;
- 25 (c) Whether the violation of this chapter or of its rules was
26 intentional;
- 27 (d) Cooperation with the department;
- 28 (e) Reparability of any adverse effects resulting from the
29 violation; and
- 30 (f) The extent to which a penalty to be imposed on a person for a
31 violation committed by another should be reduced if the person was
32 unaware of the violation and has not received a substantial economic
33 benefit from the violation.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55
35 RCW to read as follows:

36 The department may apply for an administrative inspection warrant
37 in either Thurston county superior court or the superior court in the
38 county in which the hydraulic project is located. The court may issue
39 an administrative inspection warrant where:

1 (1) Department personnel need to inspect the hydraulic project
2 site to ensure compliance with this chapter or with rules adopted to
3 implement this chapter; or

4 (2) Department personnel have probable cause to believe that a
5 violation of this chapter or of the rules that implement this chapter
6 is occurring or has occurred.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.55
8 RCW to read as follows:

9 (1) The department may disapprove an application for hydraulic
10 project approval submitted by a person who has failed to comply with
11 a final order issued pursuant to section 5 or 6 of this act or who
12 has failed to pay civil penalties issued pursuant to section 7 of
13 this act. Applications may be disapproved for up to one year from the
14 issuance of a notice of intent to disapprove applications under this
15 section, or until all outstanding civil penalties are paid and all
16 outstanding notices to comply and stop work orders are complied with,
17 whichever is longer.

18 (2) The department shall provide written notice of its intent to
19 disapprove an application under this section to the applicant and to
20 any authorized agent or landowner identified in the application.

21 (3) The disapproval period runs from thirty days following the
22 date of actual notice of intent or when all administrative and
23 judicial appeals, if any, have been exhausted.

24 (4) Any person provided the notice may seek review from the board
25 by filing a request for review within thirty days of the date of the
26 notice of intent to disapprove applications.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.55
28 RCW to read as follows:

29 Any violation of this chapter or of the rules adopted to
30 implement this chapter is declared to be a public nuisance.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55
32 RCW to read as follows:

33 The remedies under this chapter are not exclusive and do not
34 limit or abrogate any other civil or criminal penalty, remedy, or
35 right available in law, equity, or statute.

1 **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
2 read as follows:

3 (1) The hearings board shall only have jurisdiction to hear and
4 decide appeals from the following decisions of the department, the
5 director, local conservation districts, the air pollution control
6 boards or authorities as established pursuant to chapter 70.94 RCW,
7 local health departments, the department of natural resources, the
8 department of fish and wildlife, the parks and recreation commission,
9 and authorized public entities described in chapter 79.100 RCW:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 7
12 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
13 90.56.310, 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
16 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70.95.300.

25 (d) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (e) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70.95J.080.

30 (f) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70.95.205.

34 (g) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

16 (l) Decisions of the department of natural resources that are
17 reviewable under RCW 78.44.270.

18 (m) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings
21 board under RCW 79.100.120.

22 (2) The following hearings shall not be conducted by the hearings
23 board:

24 (a) Hearings required by law to be conducted by the shorelines
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW
27 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
28 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110
30 and 90.44.220.

31 (d) Hearings conducted by the department to adopt, modify, or
32 repeal rules.

33 (3) Review of rules and regulations adopted by the hearings board
34 shall be subject to review in accordance with the provisions of the
35 administrative procedure act, chapter 34.05 RCW.

36 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
37 each repealed:

1 (1) RCW 77.55.141 (Marine beach front protective bulkheads or
2 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;
3 and

4 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
5 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
6 173 s 6.

--- END ---

HOUSE BILL 1580

State of Washington

66th Legislature

2019 Regular Session

By Representatives Blake, Kretz, Kirby, Peterson, Appleton, Shewmake, Morris, Cody, and Jinkins; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740; adding a new section to
3 chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, it is
9 unlawful for a person to:

10 (a) Cause a vessel or other object to approach, in any manner,
11 within (~~two~~) four hundred yards of a southern resident orca whale;

12 (b) Position a vessel to be in the path of a southern resident
13 orca whale at any point located within four hundred yards of the
14 whale. This includes intercepting a southern resident orca whale by
15 positioning a vessel so that the prevailing wind or water current
16 carries the vessel into the path of the whale at any point located
17 within four hundred yards of the whale;

18 (c) Fail to disengage the transmission of a vessel that is within
19 (~~two~~) four hundred yards of a southern resident orca whale; (~~or~~)

20 (d) Cause a vessel or other object to exceed a speed greater than
21 seven knots over ground at any point located within one-half nautical

1 mile (one thousand thirteen yards) of a southern resident orca whale;
2 or

3 (e) Feed a southern resident orca whale.

4 (2) A person is exempt from subsection (1) of this section if
5 that person is:

6 (a) Operating a federal government vessel in the course of his or
7 her official duties, or operating a state, tribal, or local
8 government vessel when engaged in official duties involving law
9 enforcement, search and rescue, or public safety;

10 (b) Operating a vessel in conjunction with a vessel traffic
11 service established under 33 C.F.R. and following a traffic
12 separation scheme, or complying with a vessel traffic service measure
13 of direction. This also includes support vessels escorting ships in
14 the traffic lanes, such as tug boats;

15 (c) Engaging in an activity, including scientific research,
16 pursuant to a permit or other authorization from the national marine
17 fisheries service and the department;

18 (d) Lawfully engaging in a treaty Indian or commercial fishery
19 that is actively setting, retrieving, or closely tending fishing
20 gear. Commercial fishing vessels in transit are not exempt from
21 subsection (1) of this section;

22 (e) Conducting vessel operations necessary to avoid an imminent
23 and serious threat to a person, vessel, or the environment, including
24 when necessary for overall safety of navigation and to comply with
25 state and federal navigation requirements; or

26 (f) Engaging in rescue or clean-up efforts of a beached southern
27 resident orca whale overseen, coordinated, or authorized by a
28 volunteer stranding network.

29 (3) For the purpose of this section, "vessel" includes aircraft
30 while on the surface of the water, and every description of
31 watercraft on the water that is used or capable of being used as a
32 means of transportation on the water. However, "vessel" does not
33 include inner tubes, air mattresses, sailboards, and small rafts, or
34 flotation devices or toys customarily used by swimmers.

35 (4)(a) A violation of this section is a natural resource
36 infraction punishable under chapter 7.84 RCW and carries a fine of
37 five hundred dollars, not including statutory assessments added
38 pursuant to RCW 3.62.090.

1 (b) A person who qualifies for an exemption under subsection (2)
2 of this section may offer that exemption as an affirmative defense,
3 which that person must prove by a preponderance of the evidence.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15
5 RCW to read as follows:

6 (1) Commercial whale watching operators are prohibited from
7 approaching or intercepting within six hundred fifty yards in any
8 direction of a southern resident orca whale until January 1, 2023.

9 (2) By August 1, 2019, the department must adopt rules, including
10 emergency rules if necessary, to implement this section.

11 (3) The department shall complete a report to the governor and
12 the legislature on the effectiveness of the prohibition by November
13 30, 2022, including the best available science on commercial whale
14 watching vessel disturbance and noise, and the current status of the
15 population. This report must be in compliance with RCW 43.01.036.

16 (4) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Commercial whale watching" means the act of taking, or
19 offering to take, passengers aboard a vessel in order to view marine
20 mammals in their natural habitat for a fee.

21 (b) "Commercial whale watching operators" includes commercial
22 vessels and kayak rentals that are engaged in the business of whale
23 watching.

24 (c) "Commercial whale watching vessel" means any vessel that is
25 being used as a means of transportation for individuals to engage in
26 commercial whale watching.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.70
28 RCW to read as follows:

29 (1) A commercial whale watching license is required for all
30 businesses engaged in commercial whale watching activities as
31 permitted in section 4 of this act.

32 (2) The initial annual fee for a commercial whale watching
33 license involving motorized or sailing vessels is:

34 (a) One to twenty-four passengers, four hundred twenty-five
35 dollars;

36 (b) Twenty-five to fifty passengers, six hundred twenty-five
37 dollars;

1 (c) Fifty-one to one hundred passengers, nine hundred twenty-five
2 dollars;

3 (d) One hundred to one hundred fifty passengers, one thousand
4 nine hundred twenty-five dollars; and

5 (e) One hundred fifty-one passengers or greater, two thousand
6 nine hundred twenty-five dollars.

7 (3) The initial annual fee for commercial whale watching license
8 involving kayaks is four hundred twenty-five dollars.

9 (4) The application fee for a commercial whale watching license
10 is seventy-five dollars.

11 (5) "Commercial whale watching" has the same meaning as defined
12 in section 2 of this act.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.70
14 RCW to read as follows:

15 (1) The department must implement a limited-entry whale watching
16 license program for the inland waters of Washington for all whale
17 species by January 1, 2021. The limited-entry whale watching license
18 must be designed to reduce the daily and cumulative impacts on
19 southern resident orca whales and consider the economic viability of
20 license holders. In designing the program, the department may only
21 license entities that have operated a commercial whale watch business
22 for at least forty-five trips in Washington waters over 2016, 2017,
23 and 2018. The department shall at a minimum consider limitations on:

24 (a) The number of commercial whale watching operators;

25 (b) The number of days and hours that commercial whale watching
26 operators can operate;

27 (c) The duration spent in the vicinity of southern resident orca
28 whales; and

29 (d) The areas in which commercial whale watching operators may
30 operate.

31 (2) The limited-entry whale watching license program must use an
32 automatic identification system to enable effective monitoring and
33 compliance.

34 (3) The limited-entry whale watching license program may consider
35 options for the purchase and retirement of commercial whale watching
36 operations.

37 (4) The department may phase in requirements, but must adopt
38 rules to implement this section.

1 (5) The department shall complete an analysis and report to the
2 governor and the legislature on the effectiveness of the limited
3 entry whale watching program and any recommendations for changes to
4 the license fee structure by November 30, 2022, and every two years
5 thereafter until 2026. This report must be in compliance with RCW
6 43.01.036.

7 (6) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Commercial whale watching" has the same meaning as defined
10 in section 2 of this act.

11 (b) "Commercial whale watching operators" has the same meaning as
12 defined in section 2 of this act.

13 (c) "Inland waters of Washington" means Puget Sound and related
14 inland marine waters, including all salt waters of the state of
15 Washington inside the international boundary line between Washington
16 and British Columbia, and lying east of the junction of the Pacific
17 Ocean and the Strait of Juan de Fuca, and the rivers and streams
18 draining to Puget Sound as mapped by water resource inventory areas 1
19 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

20 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act are necessary
21 for the immediate preservation of the public peace, health, or
22 safety, or support of the state government and its existing public
23 institutions, and take effect immediately.

--- END ---

SENATE BILL 5577

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Frockt, Lias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740; adding a new section to
3 chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, it is
9 unlawful for a person to:

10 (a) Cause a vessel or other object to approach, in any manner,
11 within (~~two~~) four hundred yards of a southern resident orca whale;

12 (b) Position a vessel to be in the path of a southern resident
13 orca whale at any point located within four hundred yards of the
14 whale. This includes intercepting a southern resident orca whale by
15 positioning a vessel so that the prevailing wind or water current
16 carries the vessel into the path of the whale at any point located
17 within four hundred yards of the whale;

18 (c) Fail to disengage the transmission of a vessel that is within
19 (~~two~~) four hundred yards of a southern resident orca whale; (~~or~~)

20 (d) Cause a vessel or other object to exceed a speed greater than
21 seven knots over ground at any point located within one-half nautical

1 mile (one thousand thirteen yards) of a southern resident orca whale;
2 or

3 (e) Feed a southern resident orca whale.

4 (2) A person is exempt from subsection (1) of this section if
5 that person is:

6 (a) Operating a federal government vessel in the course of his or
7 her official duties, or operating a state, tribal, or local
8 government vessel when engaged in official duties involving law
9 enforcement, search and rescue, or public safety;

10 (b) Operating a vessel in conjunction with a vessel traffic
11 service established under 33 C.F.R. and following a traffic
12 separation scheme, or complying with a vessel traffic service measure
13 of direction. This also includes support vessels escorting ships in
14 the traffic lanes, such as tug boats;

15 (c) Engaging in an activity, including scientific research,
16 pursuant to a permit or other authorization from the national marine
17 fisheries service and the department;

18 (d) Lawfully engaging in a treaty Indian or commercial fishery
19 that is actively setting, retrieving, or closely tending fishing
20 gear. Commercial fishing vessels in transit are not exempt from
21 subsection (1) of this section;

22 (e) Conducting vessel operations necessary to avoid an imminent
23 and serious threat to a person, vessel, or the environment, including
24 when necessary for overall safety of navigation and to comply with
25 state and federal navigation requirements; or

26 (f) Engaging in rescue or clean-up efforts of a beached southern
27 resident orca whale overseen, coordinated, or authorized by a
28 volunteer stranding network.

29 (3) For the purpose of this section, "vessel" includes aircraft
30 while on the surface of the water, and every description of
31 watercraft on the water that is used or capable of being used as a
32 means of transportation on the water. However, "vessel" does not
33 include inner tubes, air mattresses, sailboards, and small rafts, or
34 flotation devices or toys customarily used by swimmers.

35 (4)(a) A violation of this section is a natural resource
36 infraction punishable under chapter 7.84 RCW and carries a fine of
37 five hundred dollars, not including statutory assessments added
38 pursuant to RCW 3.62.090.

1 (b) A person who qualifies for an exemption under subsection (2)
2 of this section may offer that exemption as an affirmative defense,
3 which that person must prove by a preponderance of the evidence.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15
5 RCW to read as follows:

6 (1) Commercial whale watching operators are prohibited from
7 approaching or intercepting within six hundred fifty yards in any
8 direction of a southern resident orca whale until January 1, 2023.

9 (2) By August 1, 2019, the department must adopt rules, including
10 emergency rules if necessary, to implement this section.

11 (3) The department shall complete a report to the governor and
12 the legislature on the effectiveness of the prohibition by November
13 30, 2022, including the best available science on commercial whale
14 watching vessel disturbance and noise, and the current status of the
15 population. This report must be in compliance with RCW 43.01.036.

16 (4) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Commercial whale watching" means the act of taking, or
19 offering to take, passengers aboard a vessel in order to view marine
20 mammals in their natural habitat for a fee.

21 (b) "Commercial whale watching operators" includes commercial
22 vessels and kayak rentals that are engaged in the business of whale
23 watching.

24 (c) "Commercial whale watching vessel" means any vessel that is
25 being used as a means of transportation for individuals to engage in
26 commercial whale watching.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.70
28 RCW to read as follows:

29 (1) A commercial whale watching license is required for all
30 businesses engaged in commercial whale watching activities as
31 permitted in section 4 of this act.

32 (2) The initial annual fee for a commercial whale watching
33 license involving motorized or sailing vessels is:

34 (a) One to twenty-four passengers, four hundred twenty-five
35 dollars;

36 (b) Twenty-five to fifty passengers, six hundred twenty-five
37 dollars;

1 (c) Fifty-one to one hundred passengers, nine hundred twenty-five
2 dollars;

3 (d) One hundred to one hundred fifty passengers, one thousand
4 nine hundred twenty-five dollars; and

5 (e) One hundred fifty-one passengers or greater, two thousand
6 nine hundred twenty-five dollars.

7 (3) The initial annual fee for commercial whale watching license
8 involving kayaks is four hundred twenty-five dollars.

9 (4) The application fee for a commercial whale watching license
10 is seventy-five dollars.

11 (5) "Commercial whale watching" has the same meaning as defined
12 in section 2 of this act.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.70
14 RCW to read as follows:

15 (1) The department must implement a limited-entry whale watching
16 license program for the inland waters of Washington for all whale
17 species by January 1, 2021. The limited-entry whale watching license
18 must be designed to reduce the daily and cumulative impacts on
19 southern resident orca whales and consider the economic viability of
20 license holders. In designing the program, the department may only
21 license entities that have operated a commercial whale watch business
22 for at least forty-five trips in Washington waters over 2016, 2017,
23 and 2018. The department shall at a minimum consider limitations on:

24 (a) The number of commercial whale watching operators;

25 (b) The number of days and hours that commercial whale watching
26 operators can operate;

27 (c) The duration spent in the vicinity of southern resident orca
28 whales; and

29 (d) The areas in which commercial whale watching operators may
30 operate.

31 (2) The limited-entry whale watching license program must use an
32 automatic identification system to enable effective monitoring and
33 compliance.

34 (3) The limited-entry whale watching license program may consider
35 options for the purchase and retirement of commercial whale watching
36 operations.

37 (4) The department may phase in requirements, but must adopt
38 rules to implement this section.

1 (5) The department shall complete an analysis and report to the
2 governor and the legislature on the effectiveness of the limited
3 entry whale watching program and any recommendations for changes to
4 the license fee structure by November 30, 2022, and every two years
5 thereafter until 2026. This report must be in compliance with RCW
6 43.01.036.

7 (6) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Commercial whale watching" has the same meaning as defined
10 in section 2 of this act.

11 (b) "Commercial whale watching operators" has the same meaning as
12 defined in section 2 of this act.

13 (c) "Inland waters of Washington" means Puget Sound and related
14 inland marine waters, including all salt waters of the state of
15 Washington inside the international boundary line between Washington
16 and British Columbia, and lying east of the junction of the Pacific
17 Ocean and the Strait of Juan de Fuca, and the rivers and streams
18 draining to Puget Sound as mapped by water resource inventory areas 1
19 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

20 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act are necessary
21 for the immediate preservation of the public peace, health, or
22 safety, or support of the state government and its existing public
23 institutions, and take effect immediately.

--- END ---

HOUSE BILL 1578

State of Washington**66th Legislature****2019 Regular Session**

By Representatives Lekanoff, Peterson, Doglio, Fitzgibbon, Shewmake, Robinson, Slatter, Valdez, Bergquist, Morris, Stanford, Tharinger, Cody, Jinkins, Kloba, Pollet, Frame, Davis, and Macri; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to reducing threats to southern resident killer
2 whales by improving the safety of oil transportation; amending RCW
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;
5 creating a new section; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of
8 existing policies designed to reduce the risk of oil spills have
9 helped contribute to a relatively strong safety record for oil moved
10 by water, pipeline, and train in recent years in Washington state.
11 Nevertheless, gaps exist in our safety regimen, especially deriving
12 from shifts in the modes of overwater transportation of oil and the
13 increased transport of oils that may submerge or sink, contributing
14 to an unacceptable threat to Washington waters, where a catastrophic
15 spill would inflict potentially irreversible damage on the endangered
16 southern resident killer whales. In addition to the unique marine and
17 cultural resources in Puget Sound that would be damaged by an oil
18 spill, the geographic, bathometric, and other environmental
19 peculiarities of Puget Sound present navigational challenges that
20 heighten the risk of an oil spill incident occurring. Therefore, it
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing
2 infrastructure and activities of an oil spill that could eradicate
3 our whales, violate the treaty fishing rights of federally recognized
4 Indian tribes, damage commercial fishing prospects, undercut many
5 aspects of the economy that depend on the Salish Sea, and otherwise
6 harm the health and well-being of Washington residents. In enacting
7 such measures, however, it is not the intent of the legislature to
8 mitigate, offset, or otherwise encourage additional projects or
9 activities that would increase the frequency or severity of oil
10 spills in the Salish Sea. Furthermore, it is the intent of the
11 legislature for this act to spur international discussions among
12 federal, state, provincial, and industry leaders in the United States
13 and Canada to develop an agreement for the shared funding of an
14 emergency rescue tug available to vessels in distress in the narrow
15 Straits of the San Juan Islands and other boundary waters, which
16 would lessen oil spill risks to the marine environment in both the
17 United States and Canada.

18 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
19 as follows:

20 (1) Any oil tanker, whether enrolled or registered, of greater
21 than one hundred and twenty-five thousand metric deadweight tons
22 shall be prohibited from proceeding beyond a point east of a line
23 extending from Discovery Island light south to New Dungeness light.

24 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~
25 ~~one hundred and twenty-five thousand deadweight tons may proceed~~
26 ~~beyond the points enumerated in subsection (1) if such tanker~~
27 ~~possesses all of the following standard safety features:~~

28 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~
29 ~~and one-half deadweight tons; and~~

30 ~~(b) Twin screws; and~~

31 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
32 ~~compartments; and~~

33 ~~(d) Two radars in working order and operating, one of which must~~
34 ~~be collision avoidance radar; and~~

35 ~~(e) Such other navigational position location systems as may be~~
36 ~~prescribed from time to time by the board of pilotage commissioners:~~

37 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~
38 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
39 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~

1 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
2 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
3 ~~horsepower equivalencies may be required under certain conditions as~~
4 ~~established by rule and regulation of the Washington utilities and~~
5 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
6 ~~FURTHER, That))~~ (a) (i) An oil tanker of forty to one hundred twenty-
7 five thousand metric deadweight tons may operate in the waters east
8 of a line extending from Discovery Island light south to New
9 Dungeness light and all points in the Puget Sound area, including but
10 not limited to the San Juan Islands and connected waterways and the
11 waters south of Admiralty Inlet, to the extent that these waters are
12 within the territorial boundaries of Washington, only if the oil
13 tanker is under the escort of a tug or tugs that have an aggregate
14 shaft horsepower equivalent to at least five percent of the metric
15 deadweight tons of the escorted oil tanker.

16 (ii) Effective October 1, 2019, oil tankers of less than forty
17 thousand metric deadweight tons, and articulated tug barges and
18 waterborne vessels or barges of greater than five thousand metric
19 deadweight tons may operate in Rosario Strait and connected waterways
20 to the east only if the vessel is under the escort of a tug or tugs
21 that have an aggregate shaft horsepower equivalent to at least five
22 percent of the metric deadweight tons of a forty thousand metric
23 deadweight ton oil tanker. The requirements of this subsection may be
24 adjusted by rule by the board of pilotage commissioners, consistent
25 with section 3(3) (b) of this act.

26 (b) An oil tanker, articulated tug barge, or waterborne vessel or
27 barge in ballast is not required to be under the escort of a tug.

28 (c) A tanker assigned a deadweight of less than forty thousand
29 metric deadweight tons at the time of construction or reconstruction
30 as reported in Lloyd's Register of Ships is not subject to the
31 provisions of RCW 88.16.170 ((through 88.16.190)) and 88.16.180.

32 (3) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Articulated tug barge" means a tank barge and a towing
35 vessel joined by hinged or articulated fixed mechanical equipment
36 affixed or connecting to the stern of the tank barge.

37 (b) "Oil tanker" means a self-propelled deep draft tank vessel
38 designed to transport oil in bulk. "Oil tanker" does not include an
39 articulated tug barge tank vessel.

1 (c) "Waterborne vessel or barge" includes any ship, barge, or
2 other watercraft capable of traveling on the navigable waters of this
3 state and capable of transporting any crude oil or petroleum product
4 in quantities of ten thousand gallons or more for purposes other than
5 providing fuel for its motor or engine.

6 NEW SECTION. Sec. 3. A new section is added to chapter 88.16
7 RCW to read as follows:

8 (1) (a) By December 31, 2025, the board of pilotage commissioners,
9 in consultation with the department of ecology, must adopt rules
10 regarding tug escorts to address the peculiarities of Puget Sound for
11 oil tankers of less than forty thousand metric deadweight tons,
12 articulated tug barges, and waterborne vessels or barges of greater
13 than five thousand metric deadweight tons operating in the waters
14 east of the line extending from Discovery Island light south to New
15 Dungeness light and all points in the Puget Sound area. This rule
16 making must address the tug escort requirements applicable to Rosario
17 Strait and connected waterways to the east established in RCW
18 88.16.190(2) (a) (ii), and may adjust those requirements.

19 (b) To achieve the rule-making deadline in (a) of this
20 subsection, the board of pilotage commissioners must adhere to the
21 following interim milestones:

22 (i) By September 1, 2020, identify and define the zones,
23 specified in subsection (3) (a) of this section, to inform the
24 analysis required under subsection (5) of this section; and

25 (ii) By September 1, 2023, consult with stakeholders as required
26 under subsection (6) of this section and complete the analysis
27 required under subsection (5) of this section. By September 1, 2023,
28 the department of ecology must submit a summary of the results of the
29 analysis required under subsection (5) of this section to the
30 legislature consistent with RCW 43.01.036.

31 (2) When developing rules, the board of pilotage commissioners
32 must consider:

33 (a) The results of the most recently completed vessel traffic
34 risk assessments;

35 (b) The report developed by the department of ecology as required
36 under section 206, chapter 262, Laws of 2018;

37 (c) The recommendations of tribes with usual and accustomed
38 fishing rights in these areas; and

1 (d) The recommendations included in the southern resident orca
2 task force report, November 2018.

3 (3) In the rules adopted under this section, the board of
4 pilotage commissioners must:

5 (a) Make decisions about risk protection on the basis of
6 geographic zones in the waters specified in subsection (1)(a) of this
7 section. As the initial foci of the rules, the board of pilotage
8 commissioners must equally prioritize geographic zones encompassing
9 (i) Rosario Strait and connected waterways to the east; and (ii) Haro
10 Strait and Boundary Pass;

11 (b) Specify operational requirements, such as tethering, for tug
12 escorts;

13 (c) Include functionality requirements for tug escorts, such as
14 aggregate shaft horsepower for tethered tug escorts; and

15 (d) Be designed to achieve best achievable protection, as defined
16 under RCW 88.46.010, as informed by consideration of:

- 17 (i) Accident records in British Columbia and Washington waters;
18 (ii) Existing propulsion and design standards for covered tank
19 vessels; and
20 (iii) The characteristics of the waterways.

21 (4) The rules adopted under this section may not require oil
22 tankers, articulated tug barges, waterborne vessels, or barges to be
23 under the escort of a tug when these vessels are in ballast.

24 (5) To inform rule making, the board of pilotage commissioners
25 must conduct an analysis of tug escorts using the model developed by
26 the department of ecology under section 5 of this act. The board of
27 pilotage commissioners may:

28 (a) Develop subsets of oil tankers of less than forty thousand
29 metric deadweight tons, and articulated tug barges and waterborne
30 vessels or barges of greater than five thousand metric deadweight
31 tons, and situations that could preclude the requirements of the rule
32 making for a given zone or vessel; and

33 (b) Enter into an interagency agreement with the department of
34 ecology to assist with conducting the analysis and developing the
35 rules.

36 (6) The board of pilotage commissioners must consult with the
37 United States coast guard, the Puget Sound harbor safety committee,
38 treaty tribes, ports, local governments, state agencies, and other
39 appropriate entities before adopting tug escort rules for Puget
40 Sound. Considering relevant information elicited during the

1 consultations required under this subsection, the board of pilotage
2 commissioners must also design the rules with a goal of avoiding or
3 minimizing the impacts of underwater noise from vessels in the Salish
4 Sea, focusing vessel traffic into established shipping lanes,
5 protecting and minimizing vessel traffic impacts to established
6 treaty fishing areas, and respecting and preserving the treaty-
7 protected fishing rights of federally recognized Indian tribes in the
8 Salish Sea.

9 (7) Rules adopted under this section must be periodically updated
10 consistent with section 6 of this act.

11 (8) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

13 (a) "Articulated tug barge" means a tank barge and a towing
14 vessel joined by hinged or articulated fixed mechanical equipment
15 affixed or connecting to the stern of the tank barge.

16 (b) "Oil tanker" means a self-propelled deep draft tank vessel
17 designed to transport oil in bulk. "Oil tanker" does not include an
18 articulated tug barge tank vessel.

19 (c) "Waterborne vessels or barges" includes any ship, barge, or
20 other watercraft capable of traveling on the navigable waters of this
21 state and capable of transporting any crude oil or petroleum product
22 in quantities of ten thousand gallons or more for purposes other than
23 providing fuel for its motor or engine.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46
25 RCW to read as follows:

26 (1) The department may adopt rules to require the owners and
27 operators of covered vessels transiting to or from a Washington port
28 through Haro Strait, Boundary Pass, or Rosario Strait to collectively
29 establish and fund an emergency response system that provides for an
30 emergency response towing vessel in a manner similar to the
31 requirements of RCW 88.46.125 through 88.46.139. These rules must:

32 (a) Require that an emergency response towing vessel be stationed
33 in the vicinity of the San Juan Islands and be able to respond
34 immediately to a vessel in distress in Haro Strait, Boundary Pass,
35 Rosario Strait, and connected navigable waterways;

36 (b) Establish minimum deployment and equipment standards for an
37 emergency response towing vessel, which may include requirements
38 related to the speed and availability of the vessel for deployment,

1 the functionality of the vessel in severe weather conditions, and
2 other operational capabilities;

3 (c) Allow the requirements of this section to be fulfilled by one
4 or more private organizations or nonprofit cooperatives providing
5 umbrella coverage under contract to single or multiple covered
6 vessels;

7 (d) Allow the department, at its discretion, to contract with the
8 emergency response towing vessel in response to a potentially
9 emerging maritime casualty or as a precautionary measure during
10 severe storms. In all instances of use by the department, the
11 department must be responsible for the cost of its use of an
12 emergency response towing vessel;

13 (e) Not allow the emergency response towing vessel to be
14 restricted from responding to distressed vessels that are not covered
15 vessels;

16 (f) Require the owner or operator of a vessel that receives
17 assistance from the emergency response towing vessel to submit a
18 written report to the department as soon as practicable regarding the
19 deployment of the emergency response system;

20 (g) Be designed with a goal of avoiding or minimizing the impacts
21 of underwater noise from vessels in the Salish Sea, focusing vessel
22 traffic into established shipping lanes, protecting and minimizing
23 vessel traffic impacts to established fishing areas, and respecting
24 and preserving the treaty-protected fishing rights of federally
25 recognized Indian tribes in the Salish Sea;

26 (h) Be designed to maximize the incremental risk reduction
27 offered by an emergency response system in light of the requirements
28 established in or authorized by RCW 88.16.190;

29 (i) Consider whether the adoption of rules under this section
30 would establish the perverse effects of either:

31 (i) Encouraging the development of or mitigating the impacts of
32 oil infrastructure in British Columbia; or

33 (ii) Discouraging regulatory authorities in Canada from
34 establishing tug escorts, emergency response systems, or similar
35 maritime safety requirements for vessels operating in international
36 boundary waters;

37 (j) Consider input received during the 2019 Salish Sea shared
38 waters forum;

39 (k) Be carried out in consultation with the entities identified
40 in section 3(6) of this act; and

1 (1) Rely, in part, upon analysis of the emergency response towing
2 vessel using the model developed by the department under section 5 of
3 this act.

4 (2) Rules adopted under this section must be periodically updated
5 consistent with section 6 of this act.

6 (3) The department must prioritize Haro Strait and Boundary Pass
7 as the initial focus of analysis conducted in support of rule-making
8 processes under this section.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46
10 RCW to read as follows:

11 The department must develop and maintain a model to
12 quantitatively assess current and potential future risks of oil
13 spills from covered vessels in Washington waters, as it conducts
14 ongoing oil spill risk assessments. The department must consult with
15 the United States coast guard, tribes, and stakeholders to: Determine
16 model assumptions; develop scenarios to show the likely impacts of
17 changes to model assumptions, including potential changes in vessel
18 traffic, commodities transported, and vessel safety and risk
19 reduction measures; and update the model periodically.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46
21 RCW to read as follows:

22 (1) By October 1, 2028, and every ten years thereafter, the board
23 of pilotage commissioners and the department must together consider:

24 (a) The effects of rules established under RCW 88.16.190 and
25 sections 3 and 4 of this act on vessel traffic patterns and oil spill
26 risks in the Salish Sea. Factors considered must include modeling
27 developed by the department under section 5 of this act and may
28 include: (i) Vessel traffic data; (ii) vessel accident and incident
29 data, such as incidents where tug escorts or an emergency response
30 towing vessel acted to reduce spill risks; and (iii) consultation
31 with the United States coast guard, federally recognized Indian
32 tribes, and stakeholders; and

33 (b) Whether experienced or forecasted changes to vessel traffic
34 patterns or oil spill risk in the Salish Sea necessitate an update to
35 the tug escort rules adopted under RCW 88.16.190 and section 3 of
36 this act, or to the emergency response towing vessel requirements
37 adopted under section 4 of this act.

1 (2) In the event that the department or board of pilotage
2 commissioners determines that updates are merited to the rules, the
3 department or board, as appropriate, must notify the appropriate
4 standing committees of the house of representatives and the senate,
5 and must thereafter adopt rules consistent with the requirements of
6 RCW 88.16.190, section 3 of this act, including the consultation
7 process outlined in section 3(6) of this act, and section 4 of this
8 act.

9 **Sec. 7.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
10 read as follows:

11 (1) The department must establish the Salish Sea shared waters
12 forum to address common issues in the cross-boundary waterways
13 between Washington state and British Columbia such as: Enhancing
14 efforts to reduce oil spill risk; addressing navigational safety; and
15 promoting data sharing.

16 (2) The department must:

17 (a) Coordinate with provincial and federal Canadian agencies when
18 establishing the Salish Sea shared waters forum; and

19 (b) Seek participation from stakeholders that, at minimum,
20 includes representatives of the following: State, provincial, and
21 federal governmental entities, regulated entities, environmental
22 organizations, tribes, and first nations.

23 (3) The Salish Sea shared waters forum must meet at least once
24 per year to consider the following:

25 (a) Gaps and conflicts in oil spill policies, regulations, and
26 laws;

27 (b) Opportunities to reduce oil spill risk, including requiring
28 tug escorts for oil tankers, articulated tug barges, and other
29 waterborne vessels or barges;

30 (c) Enhancing oil spill prevention, preparedness, and response
31 capacity; and

32 (d) Whether an emergency response system in Haro Strait, Boundary
33 Pass, and Rosario Strait, similar to the system implemented by the
34 maritime industry pursuant to RCW 88.46.130, will decrease oil spill
35 risk and how to fund such a shared system.

36 (4) The definitions in this subsection apply throughout this
37 section unless the context clearly requires otherwise.

1 (a) "Articulated tug barge" means a tank barge and a towing
2 vessel joined by hinged or articulated fixed mechanical equipment
3 affixed or connecting to the stern of the tank barge.

4 (b) "Waterborne vessel or barge" (~~means~~) includes any ship,
5 barge, or other watercraft capable of traveling on the navigable
6 waters of this state and capable of transporting any crude oil or
7 petroleum product in quantities of ten thousand gallons or more for
8 purposes other than providing fuel for its motor or engine.

9 (5) In advance of the 2019 meeting of the Salish Sea shared
10 waters forum, the department must partner with the coast Salish
11 gathering, which is the transboundary natural resource policy
12 dialogue of elected officials representing federal, state,
13 provincial, first nations, and tribal governments within the Salish
14 Sea, to discuss the specifics of how the shared system described in
15 subsection (3)(d) of this section could be funded. The 2019 meeting
16 of the Salish Sea shared waters forum must include continued
17 discussion of the specifics covered on this topic during the coast
18 Salish gathering.

19 (6) This section expires July 1, 2021.

20 **Sec. 8.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
21 read as follows:

22 (1)(a) A facility that receives crude oil from a railroad car
23 must provide advance notice to the department that the facility will
24 receive crude oil from a railroad car, as provided in this section.
25 The advance notice must include the route taken to the facility
26 within the state, if known, and the scheduled time, location, volume,
27 region per bill of lading, type, and gravity as measured by standards
28 developed by the American petroleum institute, of crude oil received.
29 Each week, a facility that provides advance notice under this section
30 must provide the required information regarding the scheduled arrival
31 of railroad cars carrying crude oil to be received by the facility in
32 the succeeding seven-day period. A facility is not required to
33 provide advance notice when there is no receipt of crude oil from a
34 railroad car scheduled for a seven-day period.

35 (b) Twice per year, pipelines that transport crude oil must
36 report to the department the following information about the crude
37 oil transported by the pipeline through the state: The volume of
38 crude oil, gravity of the crude oil as measured by standards
39 developed by the American petroleum institute, type of crude oil, and

1 the state or province of origin of the crude oil. This report must be
2 submitted each year by July 31st for the period January 1st through
3 June 30th and by January 31st for the period July 1st through
4 December 31st.

5 (2) The department may share information provided by a facility
6 through the advance notice system established in this section with
7 the state emergency management division and any county, city, tribal,
8 port, or local government emergency response agency upon request.

9 (3) The department must publish information collected under this
10 section on a quarterly basis on the department's internet web site.
11 With respect to the information reported under subsection (1)(a) of
12 this section, the information published by the department must be
13 aggregated on a statewide basis by route through the state, by week,
14 and by type of crude oil. The report may also include other
15 information available to the department including, but not limited
16 to, place of origin, modes of transport, number of railroad cars
17 delivering crude oil, and number and volume of spills during
18 transport and delivery.

19 (4) A facility providing advance notice under this section is not
20 responsible for meeting advance notice time frame requirements under
21 subsection (1) of this section in the event that the schedule of
22 arrivals of railroad cars carrying crude oil changes during a seven-
23 day period.

24 (5) Consistent with the requirements of chapter 42.56 RCW, the
25 department and any state, local, tribal, or public agency that
26 receives information provided under this section may not disclose any
27 such information to the public or to nongovernmental entities that
28 contains proprietary, commercial, or financial information unless
29 that information is aggregated. The requirement for aggregating
30 information does not apply when information is shared by the
31 department with emergency response agencies as provided in subsection
32 (2) of this section.

33 (6) The department shall adopt rules to implement this section.
34 The advance notice system required in this section must be consistent
35 with the oil transfer reporting system adopted by the department
36 pursuant to RCW 88.46.165.

37 **Sec. 9.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
38 read as follows:

1 (1) The department's rules authorized under RCW 88.46.160 and
2 this section shall be scaled to the risk posed to people and to the
3 environment, and be categorized by type of transfer, volume of oil,
4 frequency of transfers, and such other risk factors as identified by
5 the department.

6 (2) The rules may require prior notice be provided before an oil
7 transfer, regulated under this chapter, occurs in situations defined
8 by the department as posing a higher risk. The notice may include the
9 time, location, and volume of the oil transfer, as well as the region
10 per bill of lading, gravity as measured by standards developed by the
11 American petroleum institute, and type of crude oil. The rules may
12 not require prior notice when marine fuel outlets are transferring
13 less than three thousand gallons of oil in a single transaction to a
14 ship that is not a covered vessel and the transfers are scheduled
15 less than four hours in advance.

16 (3) The department may require semiannual reporting of volumes of
17 oil transferred to ships by a marine fuel outlet.

18 (4) The rules may require additional measures to be taken in
19 conjunction with the deployment of containment equipment or with the
20 alternatives to deploying containment equipment. However, these
21 measures must be scaled appropriately to the risks posed by the oil
22 transfer.

23 (5) The rules shall include regulations to enhance the safety of
24 oil transfers over water originating from vehicles transporting oil
25 over private roads or highways of the state.

26 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
27 July 1, 2021.

28 NEW SECTION. **Sec. 11.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---

SENATE BILL 5578

State of Washington

66th Legislature

2019 Regular Session

By Senators Van De Wege, Lias, Carlyle, Frockt, Billig, Conway, Hunt, Pedersen, Palumbo, McCoy, Dhingra, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to reducing threats to southern resident killer
2 whales by improving the safety of oil transportation; amending RCW
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;
5 creating a new section; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of
8 existing policies designed to reduce the risk of oil spills have
9 helped contribute to a relatively strong safety record for oil moved
10 by water, pipeline, and train in recent years in Washington state.
11 Nevertheless, gaps exist in our safety regimen, especially deriving
12 from shifts in the modes of overwater transportation of oil and the
13 increased transport of oils that may submerge or sink, contributing
14 to an unacceptable threat to Washington waters, where a catastrophic
15 spill would inflict potentially irreversible damage on the endangered
16 southern resident killer whales. In addition to the unique marine and
17 cultural resources in Puget Sound that would be damaged by an oil
18 spill, the geographic, bathometric, and other environmental
19 peculiarities of Puget Sound present navigational challenges that
20 heighten the risk of an oil spill incident occurring. Therefore, it
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing
2 infrastructure and activities of an oil spill that could eradicate
3 our whales, violate the treaty fishing rights of federally recognized
4 Indian tribes, damage commercial fishing prospects, undercut many
5 aspects of the economy that depend on the Salish Sea, and otherwise
6 harm the health and well-being of Washington residents. In enacting
7 such measures, however, it is not the intent of the legislature to
8 mitigate, offset, or otherwise encourage additional projects or
9 activities that would increase the frequency or severity of oil
10 spills in the Salish Sea. Furthermore, it is the intent of the
11 legislature for this act to spur international discussions among
12 federal, state, provincial, and industry leaders in the United States
13 and Canada to develop an agreement for the shared funding of an
14 emergency rescue tug available to vessels in distress in the narrow
15 Straits of the San Juan Islands and other boundary waters, which
16 would lessen oil spill risks to the marine environment in both the
17 United States and Canada.

18 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
19 as follows:

20 (1) Any oil tanker, whether enrolled or registered, of greater
21 than one hundred and twenty-five thousand metric deadweight tons
22 shall be prohibited from proceeding beyond a point east of a line
23 extending from Discovery Island light south to New Dungeness light.

24 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~
25 ~~one hundred and twenty-five thousand deadweight tons may proceed~~
26 ~~beyond the points enumerated in subsection (1) if such tanker~~
27 ~~possesses all of the following standard safety features:~~

28 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~
29 ~~and one-half deadweight tons; and~~

30 ~~(b) Twin screws; and~~

31 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
32 ~~compartments; and~~

33 ~~(d) Two radars in working order and operating, one of which must~~
34 ~~be collision avoidance radar; and~~

35 ~~(e) Such other navigational position location systems as may be~~
36 ~~prescribed from time to time by the board of pilotage commissioners:~~

37 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~
38 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
39 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~

1 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
2 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
3 ~~horsepower equivalencies may be required under certain conditions as~~
4 ~~established by rule and regulation of the Washington utilities and~~
5 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
6 ~~FURTHER, That))~~ (a) (i) An oil tanker of forty to one hundred twenty-
7 five thousand metric deadweight tons may operate in the waters east
8 of a line extending from Discovery Island light south to New
9 Dungeness light and all points in the Puget Sound area, including but
10 not limited to the San Juan Islands and connected waterways and the
11 waters south of Admiralty Inlet, to the extent that these waters are
12 within the territorial boundaries of Washington, only if the oil
13 tanker is under the escort of a tug or tugs that have an aggregate
14 shaft horsepower equivalent to at least five percent of the metric
15 deadweight tons of the escorted oil tanker.

16 (ii) Effective October 1, 2019, oil tankers of less than forty
17 thousand metric deadweight tons, and articulated tug barges and
18 waterborne vessels or barges of greater than five thousand metric
19 deadweight tons may operate in Rosario Strait and connected waterways
20 to the east only if the vessel is under the escort of a tug or tugs
21 that have an aggregate shaft horsepower equivalent to at least five
22 percent of the metric deadweight tons of a forty thousand metric
23 deadweight ton oil tanker. The requirements of this subsection may be
24 adjusted by rule by the board of pilotage commissioners, consistent
25 with section 3(3) (b) of this act.

26 (b) An oil tanker, articulated tug barge, or waterborne vessel or
27 barge in ballast is not required to be under the escort of a tug.

28 (c) A tanker assigned a deadweight of less than forty thousand
29 metric deadweight tons at the time of construction or reconstruction
30 as reported in Lloyd's Register of Ships is not subject to the
31 provisions of RCW 88.16.170 ((through 88.16.190)) and 88.16.180.

32 (3) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Articulated tug barge" means a tank barge and a towing
35 vessel joined by hinged or articulated fixed mechanical equipment
36 affixed or connecting to the stern of the tank barge.

37 (b) "Oil tanker" means a self-propelled deep draft tank vessel
38 designed to transport oil in bulk. "Oil tanker" does not include an
39 articulated tug barge tank vessel.

1 (c) "Waterborne vessel or barge" includes any ship, barge, or
2 other watercraft capable of traveling on the navigable waters of this
3 state and capable of transporting any crude oil or petroleum product
4 in quantities of ten thousand gallons or more for purposes other than
5 providing fuel for its motor or engine.

6 NEW SECTION. Sec. 3. A new section is added to chapter 88.16
7 RCW to read as follows:

8 (1) (a) By December 31, 2025, the board of pilotage commissioners,
9 in consultation with the department of ecology, must adopt rules
10 regarding tug escorts to address the peculiarities of Puget Sound for
11 oil tankers of less than forty thousand metric deadweight tons,
12 articulated tug barges, and waterborne vessels or barges of greater
13 than five thousand metric deadweight tons operating in the waters
14 east of the line extending from Discovery Island light south to New
15 Dungeness light and all points in the Puget Sound area. This rule
16 making must address the tug escort requirements applicable to Rosario
17 Strait and connected waterways to the east established in RCW
18 88.16.190(2) (a) (ii), and may adjust those requirements.

19 (b) To achieve the rule-making deadline in (a) of this
20 subsection, the board of pilotage commissioners must adhere to the
21 following interim milestones:

22 (i) By September 1, 2020, identify and define the zones,
23 specified in subsection (3) (a) of this section, to inform the
24 analysis required under subsection (5) of this section; and

25 (ii) By September 1, 2023, consult with stakeholders as required
26 under subsection (6) of this section and complete the analysis
27 required under subsection (5) of this section. By September 1, 2023,
28 the department of ecology must submit a summary of the results of the
29 analysis required under subsection (5) of this section to the
30 legislature consistent with RCW 43.01.036.

31 (2) When developing rules, the board of pilotage commissioners
32 must consider:

33 (a) The results of the most recently completed vessel traffic
34 risk assessments;

35 (b) The report developed by the department of ecology as required
36 under section 206, chapter 262, Laws of 2018;

37 (c) The recommendations of tribes with usual and accustomed
38 fishing rights in these areas; and

1 (d) The recommendations included in the southern resident orca
2 task force report, November 2018.

3 (3) In the rules adopted under this section, the board of
4 pilotage commissioners must:

5 (a) Make decisions about risk protection on the basis of
6 geographic zones in the waters specified in subsection (1)(a) of this
7 section. As the initial foci of the rules, the board of pilotage
8 commissioners must equally prioritize geographic zones encompassing
9 (i) Rosario Strait and connected waterways to the east; and (ii) Haro
10 Strait and Boundary Pass;

11 (b) Specify operational requirements, such as tethering, for tug
12 escorts;

13 (c) Include functionality requirements for tug escorts, such as
14 aggregate shaft horsepower for tethered tug escorts; and

15 (d) Be designed to achieve best achievable protection, as defined
16 under RCW 88.46.010, as informed by consideration of:

- 17 (i) Accident records in British Columbia and Washington waters;
18 (ii) Existing propulsion and design standards for covered tank
19 vessels; and
20 (iii) The characteristics of the waterways.

21 (4) The rules adopted under this section may not require oil
22 tankers, articulated tug barges, waterborne vessels, or barges to be
23 under the escort of a tug when these vessels are in ballast.

24 (5) To inform rule making, the board of pilotage commissioners
25 must conduct an analysis of tug escorts using the model developed by
26 the department of ecology under section 5 of this act. The board of
27 pilotage commissioners may:

28 (a) Develop subsets of oil tankers of less than forty thousand
29 metric deadweight tons, and articulated tug barges and waterborne
30 vessels or barges of greater than five thousand metric deadweight
31 tons, and situations that could preclude the requirements of the rule
32 making for a given zone or vessel; and

33 (b) Enter into an interagency agreement with the department of
34 ecology to assist with conducting the analysis and developing the
35 rules.

36 (6) The board of pilotage commissioners must consult with the
37 United States coast guard, the Puget Sound harbor safety committee,
38 treaty tribes, ports, local governments, state agencies, and other
39 appropriate entities before adopting tug escort rules for Puget
40 Sound. Considering relevant information elicited during the

1 consultations required under this subsection, the board of pilotage
2 commissioners must also design the rules with a goal of avoiding or
3 minimizing the impacts of underwater noise from vessels in the Salish
4 Sea, focusing vessel traffic into established shipping lanes,
5 protecting and minimizing vessel traffic impacts to established
6 treaty fishing areas, and respecting and preserving the treaty-
7 protected fishing rights of federally recognized Indian tribes in the
8 Salish Sea.

9 (7) Rules adopted under this section must be periodically updated
10 consistent with section 6 of this act.

11 (8) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

13 (a) "Articulated tug barge" means a tank barge and a towing
14 vessel joined by hinged or articulated fixed mechanical equipment
15 affixed or connecting to the stern of the tank barge.

16 (b) "Oil tanker" means a self-propelled deep draft tank vessel
17 designed to transport oil in bulk. "Oil tanker" does not include an
18 articulated tug barge tank vessel.

19 (c) "Waterborne vessels or barges" includes any ship, barge, or
20 other watercraft capable of traveling on the navigable waters of this
21 state and capable of transporting any crude oil or petroleum product
22 in quantities of ten thousand gallons or more for purposes other than
23 providing fuel for its motor or engine.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46
25 RCW to read as follows:

26 (1) The department may adopt rules to require the owners and
27 operators of covered vessels transiting to or from a Washington port
28 through Haro Strait, Boundary Pass, or Rosario Strait to collectively
29 establish and fund an emergency response system that provides for an
30 emergency response towing vessel in a manner similar to the
31 requirements of RCW 88.46.125 through 88.46.139. These rules must:

32 (a) Require that an emergency response towing vessel be stationed
33 in the vicinity of the San Juan Islands and be able to respond
34 immediately to a vessel in distress in Haro Strait, Boundary Pass,
35 Rosario Strait, and connected navigable waterways;

36 (b) Establish minimum deployment and equipment standards for an
37 emergency response towing vessel, which may include requirements
38 related to the speed and availability of the vessel for deployment,

1 the functionality of the vessel in severe weather conditions, and
2 other operational capabilities;

3 (c) Allow the requirements of this section to be fulfilled by one
4 or more private organizations or nonprofit cooperatives providing
5 umbrella coverage under contract to single or multiple covered
6 vessels;

7 (d) Allow the department, at its discretion, to contract with the
8 emergency response towing vessel in response to a potentially
9 emerging maritime casualty or as a precautionary measure during
10 severe storms. In all instances of use by the department, the
11 department must be responsible for the cost of its use of an
12 emergency response towing vessel;

13 (e) Not allow the emergency response towing vessel to be
14 restricted from responding to distressed vessels that are not covered
15 vessels;

16 (f) Require the owner or operator of a vessel that receives
17 assistance from the emergency response towing vessel to submit a
18 written report to the department as soon as practicable regarding the
19 deployment of the emergency response system;

20 (g) Be designed with a goal of avoiding or minimizing the impacts
21 of underwater noise from vessels in the Salish Sea, focusing vessel
22 traffic into established shipping lanes, protecting and minimizing
23 vessel traffic impacts to established fishing areas, and respecting
24 and preserving the treaty-protected fishing rights of federally
25 recognized Indian tribes in the Salish Sea;

26 (h) Be designed to maximize the incremental risk reduction
27 offered by an emergency response system in light of the requirements
28 established in or authorized by RCW 88.16.190;

29 (i) Consider whether the adoption of rules under this section
30 would establish the perverse effects of either:

31 (i) Encouraging the development of or mitigating the impacts of
32 oil infrastructure in British Columbia; or

33 (ii) Discouraging regulatory authorities in Canada from
34 establishing tug escorts, emergency response systems, or similar
35 maritime safety requirements for vessels operating in international
36 boundary waters;

37 (j) Consider input received during the 2019 Salish Sea shared
38 waters forum;

39 (k) Be carried out in consultation with the entities identified
40 in section 3(6) of this act; and

1 (1) Rely, in part, upon analysis of the emergency response towing
2 vessel using the model developed by the department under section 5 of
3 this act.

4 (2) Rules adopted under this section must be periodically updated
5 consistent with section 6 of this act.

6 (3) The department must prioritize Haro Strait and Boundary Pass
7 as the initial focus of analysis conducted in support of rule-making
8 processes under this section.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46
10 RCW to read as follows:

11 The department must develop and maintain a model to
12 quantitatively assess current and potential future risks of oil
13 spills from covered vessels in Washington waters, as it conducts
14 ongoing oil spill risk assessments. The department must consult with
15 the United States coast guard, tribes, and stakeholders to: Determine
16 model assumptions; develop scenarios to show the likely impacts of
17 changes to model assumptions, including potential changes in vessel
18 traffic, commodities transported, and vessel safety and risk
19 reduction measures; and update the model periodically.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46
21 RCW to read as follows:

22 (1) By October 1, 2028, and every ten years thereafter, the board
23 of pilotage commissioners and the department must together consider:

24 (a) The effects of rules established under RCW 88.16.190 and
25 sections 3 and 4 of this act on vessel traffic patterns and oil spill
26 risks in the Salish Sea. Factors considered must include modeling
27 developed by the department under section 5 of this act and may
28 include: (i) Vessel traffic data; (ii) vessel accident and incident
29 data, such as incidents where tug escorts or an emergency response
30 towing vessel acted to reduce spill risks; and (iii) consultation
31 with the United States coast guard, federally recognized Indian
32 tribes, and stakeholders; and

33 (b) Whether experienced or forecasted changes to vessel traffic
34 patterns or oil spill risk in the Salish Sea necessitate an update to
35 the tug escort rules adopted under RCW 88.16.190 and section 3 of
36 this act, or to the emergency response towing vessel requirements
37 adopted under section 4 of this act.

1 (2) In the event that the department or board of pilotage
2 commissioners determines that updates are merited to the rules, the
3 department or board, as appropriate, must notify the appropriate
4 standing committees of the house of representatives and the senate,
5 and must thereafter adopt rules consistent with the requirements of
6 RCW 88.16.190, section 3 of this act, including the consultation
7 process outlined in section 3(6) of this act, and section 4 of this
8 act.

9 **Sec. 7.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
10 read as follows:

11 (1) The department must establish the Salish Sea shared waters
12 forum to address common issues in the cross-boundary waterways
13 between Washington state and British Columbia such as: Enhancing
14 efforts to reduce oil spill risk; addressing navigational safety; and
15 promoting data sharing.

16 (2) The department must:

17 (a) Coordinate with provincial and federal Canadian agencies when
18 establishing the Salish Sea shared waters forum; and

19 (b) Seek participation from stakeholders that, at minimum,
20 includes representatives of the following: State, provincial, and
21 federal governmental entities, regulated entities, environmental
22 organizations, tribes, and first nations.

23 (3) The Salish Sea shared waters forum must meet at least once
24 per year to consider the following:

25 (a) Gaps and conflicts in oil spill policies, regulations, and
26 laws;

27 (b) Opportunities to reduce oil spill risk, including requiring
28 tug escorts for oil tankers, articulated tug barges, and other
29 waterborne vessels or barges;

30 (c) Enhancing oil spill prevention, preparedness, and response
31 capacity; and

32 (d) Whether an emergency response system in Haro Strait, Boundary
33 Pass, and Rosario Strait, similar to the system implemented by the
34 maritime industry pursuant to RCW 88.46.130, will decrease oil spill
35 risk and how to fund such a shared system.

36 (4) The definitions in this subsection apply throughout this
37 section unless the context clearly requires otherwise.

1 (a) "Articulated tug barge" means a tank barge and a towing
2 vessel joined by hinged or articulated fixed mechanical equipment
3 affixed or connecting to the stern of the tank barge.

4 (b) "Waterborne vessel or barge" (~~means~~) includes any ship,
5 barge, or other watercraft capable of traveling on the navigable
6 waters of this state and capable of transporting any crude oil or
7 petroleum product in quantities of ten thousand gallons or more for
8 purposes other than providing fuel for its motor or engine.

9 (5) In advance of the 2019 meeting of the Salish Sea shared
10 waters forum, the department must partner with the coast Salish
11 gathering, which is the transboundary natural resource policy
12 dialogue of elected officials representing federal, state,
13 provincial, first nations, and tribal governments within the Salish
14 Sea, to discuss the specifics of how the shared system described in
15 subsection (3)(d) of this section could be funded. The 2019 meeting
16 of the Salish Sea shared waters forum must include continued
17 discussion of the specifics covered on this topic during the coast
18 Salish gathering.

19 (6) This section expires July 1, 2021.

20 **Sec. 8.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
21 read as follows:

22 (1)(a) A facility that receives crude oil from a railroad car
23 must provide advance notice to the department that the facility will
24 receive crude oil from a railroad car, as provided in this section.
25 The advance notice must include the route taken to the facility
26 within the state, if known, and the scheduled time, location, volume,
27 region per bill of lading, type, and gravity as measured by standards
28 developed by the American petroleum institute, of crude oil received.
29 Each week, a facility that provides advance notice under this section
30 must provide the required information regarding the scheduled arrival
31 of railroad cars carrying crude oil to be received by the facility in
32 the succeeding seven-day period. A facility is not required to
33 provide advance notice when there is no receipt of crude oil from a
34 railroad car scheduled for a seven-day period.

35 (b) Twice per year, pipelines that transport crude oil must
36 report to the department the following information about the crude
37 oil transported by the pipeline through the state: The volume of
38 crude oil, gravity of the crude oil as measured by standards
39 developed by the American petroleum institute, type of crude oil, and

1 the state or province of origin of the crude oil. This report must be
2 submitted each year by July 31st for the period January 1st through
3 June 30th and by January 31st for the period July 1st through
4 December 31st.

5 (2) The department may share information provided by a facility
6 through the advance notice system established in this section with
7 the state emergency management division and any county, city, tribal,
8 port, or local government emergency response agency upon request.

9 (3) The department must publish information collected under this
10 section on a quarterly basis on the department's internet web site.
11 With respect to the information reported under subsection (1)(a) of
12 this section, the information published by the department must be
13 aggregated on a statewide basis by route through the state, by week,
14 and by type of crude oil. The report may also include other
15 information available to the department including, but not limited
16 to, place of origin, modes of transport, number of railroad cars
17 delivering crude oil, and number and volume of spills during
18 transport and delivery.

19 (4) A facility providing advance notice under this section is not
20 responsible for meeting advance notice time frame requirements under
21 subsection (1) of this section in the event that the schedule of
22 arrivals of railroad cars carrying crude oil changes during a seven-
23 day period.

24 (5) Consistent with the requirements of chapter 42.56 RCW, the
25 department and any state, local, tribal, or public agency that
26 receives information provided under this section may not disclose any
27 such information to the public or to nongovernmental entities that
28 contains proprietary, commercial, or financial information unless
29 that information is aggregated. The requirement for aggregating
30 information does not apply when information is shared by the
31 department with emergency response agencies as provided in subsection
32 (2) of this section.

33 (6) The department shall adopt rules to implement this section.
34 The advance notice system required in this section must be consistent
35 with the oil transfer reporting system adopted by the department
36 pursuant to RCW 88.46.165.

37 **Sec. 9.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
38 read as follows:

1 (1) The department's rules authorized under RCW 88.46.160 and
2 this section shall be scaled to the risk posed to people and to the
3 environment, and be categorized by type of transfer, volume of oil,
4 frequency of transfers, and such other risk factors as identified by
5 the department.

6 (2) The rules may require prior notice be provided before an oil
7 transfer, regulated under this chapter, occurs in situations defined
8 by the department as posing a higher risk. The notice may include the
9 time, location, and volume of the oil transfer, as well as the region
10 per bill of lading, gravity as measured by standards developed by the
11 American petroleum institute, and type of crude oil. The rules may
12 not require prior notice when marine fuel outlets are transferring
13 less than three thousand gallons of oil in a single transaction to a
14 ship that is not a covered vessel and the transfers are scheduled
15 less than four hours in advance.

16 (3) The department may require semiannual reporting of volumes of
17 oil transferred to ships by a marine fuel outlet.

18 (4) The rules may require additional measures to be taken in
19 conjunction with the deployment of containment equipment or with the
20 alternatives to deploying containment equipment. However, these
21 measures must be scaled appropriately to the risks posed by the oil
22 transfer.

23 (5) The rules shall include regulations to enhance the safety of
24 oil transfers over water originating from vehicles transporting oil
25 over private roads or highways of the state.

26 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
27 July 1, 2021.

28 NEW SECTION. **Sec. 11.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-102

File ID:	AB2019-102	Version:	1	Status:	Agenda Ready
File Created:	01/25/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		

First Assigned to: Council Finance and Administrative Services Committee

Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	
---------------------	------------	------------------------	--	----------------------	--

TITLE FOR AGENDA ITEM:

Discussion of proposed modifications to the Unified Fee Schedule to accommodate changes to the Aquatic Invasive Species (AIS) Ordinance WCC 2.27A

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Worksstaff will introduce for discussion proposed changes to the Unified Fee Schedule needed to accommodate changes to the aquatic invasive species ordinance (WCC 2.27A).

HISTORY OF LEGISLATIVE FILE

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

Attachments:

Final Action:
Enactment Date:
Enactment #:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-135

File ID:	AB2019-135	Version:	1	Status:	Agenda Ready
File Created:	02/11/2019	Entered by:	BBushaw@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Agreement		

First Assigned to: Council Finance and Administrative Services Committee

Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	
---------------------	------------	------------------------	--	----------------------	--

TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a Grant Agreement between Whatcom County and the Department of Ecology (DOE) for Water Quality Combined Financial Assistance Grant Agreement WQC-2017-WhCoPw-00030 for the Agate Bay Stormwater Improvements project in the amount of \$552,548.62

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Scope of Work: Grant agreement will reimburse up 75% of the eligible costs associated with the Agate Bay Phase II Stormwater Improvement project. This is a project based budget established by county council, (365100)

HISTORY OF LEGISLATIVE FILE

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

Attachments: Memo for WA DOE Agate Stormwater Grant, CIS-Grant Agreement

Final Action:
Enactment Date:
Enactment #:

Jon Hutchings
Director



Stormwater

322 N. Commercial , Suite 224
Bellingham, WA 98225
Main: (360) 778-6210
Fax: (360) 778-6211

www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Jack Louws, Whatcom County Executive, and
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Kraig Olason, Stormwater Program Manager

RE: Washington State Dept. of Ecology Water Quality Grant #WQC-2017-
WhCoPW-00030 for Agate Bay Stormwater Improvements

DATE: February 6, 2019

Please find enclosed for your review and signature two originals of Water Quality Combined Financial Assistance Grant Agreement WQC-2016-WhCoPW-00030 between Washington State Dept. of Ecology (DOE) and Whatcom County for the Agate Bay Stormwater Improvements project.

▪ **Requested Action**

Public Works-Stormwater requests the County Executive approve the receipt of DOE grant funds for project design and construction.

▪ **Background and Purpose**

Whatcom County will design and construct new stormwater retrofits for water quality improvements in the Agate Bay Phase II Stormwater Improvements project within the Lake Whatcom watershed. This project treats stormwater runoff to reduce phosphorus loading into Lake Whatcom. It is a priority capital project in Whatcom County's Lake Whatcom Comprehensive Stormwater Plan and the Six-Year Water Resources Improvement Program. This grant will reimburse a portion of the project expenditures.

▪ **Funding Amount and Source**

The total amount of this grant agreement is \$736,731.50. DOE will provide financial assistance in the amount of \$552,548.62, and Whatcom County will contribute a 25% match of \$184,182.88 (project-based cost center 365100).

Please contact Kraig Olason at extension 6301, if you have any questions or concerns regarding the terms of this agreement.

Enc

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract
No.

201902012

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

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Stormwater – 907610
Contract or Grant Administrator:	Kraig Olason, Stormwater Manager
Contractor's / Agency Name:	WA State Dept. of Ecology
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): _____ WQC-2017-WQC-2017-WhCoPW-00030 CFDA#: _____	
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 123217	
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): \$ <u>552,548.62</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: <i>Grant agreement will reimburse up to 75% of the eligible costs associated with the Agate Bay Phase II Stormwater Improvement project. This is a project based budget established by county council, (365100).</i>	
Term of Contract:	Expiration Date: 6/30/2020

Contract Routing:	1. Prepared by: <u>Kraig Olason</u> 2. Attorney signoff: <u>Christopher Quinn</u> <i>CPQ</i> 3. AS Finance reviewed: <u>M Caldwell</u> 4. IT reviewed (if IT related): _____ 5. Contractor signed: _____ 6. Submitted to Exec.: _____ <i>✓</i> 7. Council approved (if necessary): _____ 8. Executive signed: _____ 9. Original to Council: _____	Date: <u>2/6/19</u> Date: <u>2/06/2019</u> Date: <u>2/6/19</u> Date: _____ Date: _____ Date: <u>2-14-19</u> Date: _____ Date: _____
-------------------	---	--



Agreement No. WQC-2017-WhCoPW-00030

WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY PUBLIC WORKS DEPARTMENT

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

GENERAL INFORMATION

Project Title:	Agate Bay Stormwater Improvements
Total Cost:	\$1,564,651.00
Total Eligible Cost:	\$736,731.50
Ecology Share:	\$552,548.62
Recipient Share:	\$184,182.88
The Effective Date of this Agreement is:	07/01/2017
The Expiration Date of this Agreement is no later than:	06/30/2020
Project Type:	Stormwater Facility

Project Short Description:

This project will improve water quality in Lake Whatcom through the installation of water quality facilities to reduce total phosphorus and total suspended solids (TSS) in the Agate Bay sub-watershed in Whatcom County.

Project Long Description:

Lake Whatcom supplies drinking water to approximately 100,000 residents in the Bellingham area. Elevated levels of phosphorus, bacteria, and dissolved oxygen have caused Lake Whatcom to be placed on Washington State's 303(d) list as an impaired waterbody. The Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Loads (TMDL) mandates that stormwater phosphorus loading to the lake be reduced substantially. The TMDL indicates that phosphorus loading from developed areas is the primary driver of oxygen depletion in Lake Whatcom. Research by Western Washington University has shown that oxygen depletion in Lake Whatcom is getting worse and periods of excessive algae growth have increased in frequency. In the summer of 2009, a significant algae bloom clogged drinking water intake structures, forcing the City of Bellingham to implement an emergency ban on all outdoor water use. The TMDL estimates that runoff from 87

percent of currently developed areas must be reduced so that Lake Whatcom can meet state water quality standards.

The RECIPIENT will address TMDL requirements and improve water quality in Lake Whatcom by designing and installing water quality facilities for the eastern sub-basin of the Agate Bay sub-watershed of Lake Whatcom. This project will treat runoff from 6.5 acres of impervious surfaces and 35 acres of lawn and landscaped areas. The RECIPIENT will install facilities in the County rights-of-way that will treat approximately 91 percent of the total runoff volume from the sub-basin.

Overall Goal:

This project will help protect and restore water quality in Washington state by reducing stormwater impacts from existing infrastructure and development.

RECIPIENT INFORMATION

Organization Name: Whatcom County Public Works Department

Federal Tax ID: 91-6001383

DUNS Number: 060044641

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

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

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

Contacts

<p>Project Manager</p>	<p>Daniel Goger Engineer III</p> <p>322 N. Commercial Street, Suite 220 Bellingham, Washington 98225 Email: dgoger@co.whatcom.wa.us Phone: (360) 778-6200</p>
<p>Billing Contact</p>	<p>Christy Fowler</p> <p>322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214</p>
<p>Authorized Signatory</p>	<p>Jon Hutchings Director</p> <p>322 N. Commercial Street, Suite 220 Bellingham, Washington 98225 Email: jhutchin@co.whatcom.wa.us Phone: (360) 778-6200</p>

ECOLOGY INFORMATION

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

Physical Address: Water Quality
 300 Desmond Drive SE
 Lacey, WA 98503

Contacts

<p>Project Manager</p>	<p>Sylvia Graham Nonpoint and Stormwater Financial Assistance Specialist</p> <p>913 Squalicum Way Suite 101 Bellingham, Washington 98225 Email: sygr461@ecy.wa.gov Phone: (360) 255-4393</p>
<p>Financial Manager</p>	<p>Torren Valdez</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: TVAL461@ecy.wa.gov Phone: (360) 407-6424</p>
<p>Technical Advisor</p>	<p>Doug Howie Senior Stormwater Engineer</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: DOHO461@ecy.wa.gov Phone: (360) 407-6444</p>

AUTHORIZING SIGNATURES

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

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

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

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

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

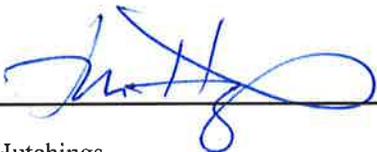
The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State
Department of Ecology

Whatcom County Public Works Department

By: _____

By:  2/12/19

Heather R. Bartlett
Water Quality
Program Manager
Date

Jon Hutchings
Director
Date

Template Approved to Form by
Attorney General's Office

State of Washington Department of Ecology
Agreement No: WQC-2017-WhCoPW-00030
Project Title: Agate Bay Stormwater Improvements
Recipient Name: Whatcom County Public Works Department

Jack Louws

Whatcom County Executive

Date

Chris Quinn



2/13/19

Deputy Prosecuting Attorney – Civil
Division

Date

SCOPE OF WORK

Task Number: 1 **Task Cost: \$0.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and RECIPIENT closeout report.
- * Properly maintained project documentation

Recipient Task Coordinator: Daniel Goger

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Quarterly Progress Reports	
1.2	Recipient Closeout Report	
1.3	Project Outcome Summary Report	

SCOPE OF WORK

Task Number: 2 **Task Cost: \$72,000.00**

Task Title: Design Plans and Specs, Environmental Review

Task Description:

The RECIPIENT shall ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

A. The RECIPIENT will coordinate the preparation and submittal of State Environmental Policy Act (SEPA) documentation.

B. The RECIPIENT is responsible for application of, receipt of, and compliance with all required local, state, tribal and federal permits, licenses, easements, or property rights necessary for the project.

C. The RECIPIENT will comply with Executive Order (05-05) cultural resources review requirements. To initiate cultural resources review the RECIPIENT will:

1. Submit an ECOLOGY 05-05/106 Form, or a cultural resources survey or assessment completed by a licensed archaeologist to ECOLOGY. All submitted materials must conform to the Washington State Standards for Cultural Resource Reporting (DAHP February 2014).
2. Develop and submit an Inadvertent Discovery Plan (IDP) to ECOLOGY. The RECIPIENT will ensure that all contractors and subcontractors have a copy of the completed IDP prior to and while working on-site. An IDP template may be found on the ECOLOGY website.

Ground disturbing work (including geotechnical investigations) completed prior to receiving written notice to proceed from ECOLOGY shall not be eligible for reimbursement.

D. The RECIPIENT will develop a project Design Report. Projects must be designed in accordance with the Stormwater Management Manual for Eastern Washington, Stormwater Management Manual for Western Washington, or equivalent manual. Project must be reviewed and accepted in writing by ECOLOGY to be eligible for reimbursement.

The RECIPIENT will submit one digital copy of the items listed below to ECOLOGY for review. Reduce design figures to 11x17 inches in size and ensure they are legible.

1. Design Report. For a complete list of required design report elements refer to the ECOLOGY website.

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology Design Report Acceptance Letter prior to proceeding to 90 Percent design.

2. 90 Percent Design Package. At a minimum, this package must include 90 percent plans, specifications, engineer's opinion of cost which includes a schedule of eligible costs, and project construction schedule. For current bid inserts and specifications refer to the ECOLOGY website.

State of Washington Department of Ecology
Agreement No: WQC-2017-WhCoPW-00030
Project Title: Agate Bay Stormwater Improvements
Recipient Name: Whatcom County Public Works Department

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology 90 Percent Design Acceptance Letter prior to proceeding Final Design.

3. The RECIPIENT will submit a digital copy of the Final Bid Package to ECOLOGY for review and acceptance prior to advertising the project. The Final Bid Package includes: project plans, specifications, engineer’s opinion of cost including a schedule of eligible costs, and project construction schedule.

Task Goal Statement:

The RECIPIENT will complete all design, environmental review, and permitting tasks and respond to ECOLOGY comments in a timely manner.

Task Expected Outcome:

The project will meet the requirements set forth by the State Environmental Policy Act, cultural resource protection requirements, ECOLOGY water quality facility design standards, and all other applicable federal, state, and local laws and regulations.

Recipient Task Coordinator: Daniel Goger

Design Plans and Specs, Environmental Review

Deliverables

Number	Description	Due Date
2.1	Copy of SEPA determination documentation. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	Submit ECOLOGY 05-05/106 Form and any supplemental cultural resources documentation including Cultural Resource surveys directly to the Ecology Project Manager. Upload the Final Determination Letter to EAGL.	
2.3	Inadvertent Discovery Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.4	Design Report. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.5	Responses to ECOLOGY Design Report comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.6	Ecology Design Report Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.7	90 Percent Design Package. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.8	Responses to ECOLOGY 90 Percent Design Plan comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.9	Ecology 90 Percent Design Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.10	List of permits acquired, and environmental review documents. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.11	Final Bid Package. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.12	Ecology Final Bid Package Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	

SCOPE OF WORK

Task Number: 3 **Task Cost:** \$63,430.00

Task Title: Construction Management

Task Description:

- A. The RECIPIENT will provide construction oversight and management of the project.
- B. The RECIPIENT will submit a detailed construction quality assurance plan to ECOLOGY for review and acceptance before the start of construction. This plan must describe how the RECIPIENT will perform adequate and competent construction oversight. Once accepted by Ecology, upload to EAGL.
- C. The RECIPIENT will conduct a pre-construction conference meeting and invite ECOLOGY to attend.
- D. The RECIPIENT will submit an updated project schedule with projected cash flow to ECOLOGY within 30 days of the start of construction. The RECIPIENT will revise and/or update the project schedule whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the updated schedule to ECOLOGY with the quarterly report. When changes in the construction schedule affect previous cash flow estimates, The RECIPIENT must submit revised cash flow projections to ECOLOGY.
- E. Prior to execution, the RECIPIENT will submit in writing any eligible change orders that are a significant deviation from ECOLOGY-accepted plans and specifications for ECOLOGY review and acceptance for payment. ECOLOGY must review and accept all change orders that impact grant eligible activities prior to implementation. ECOLOGY must review all other change orders for technical merit and should be submitted within 30 days after execution. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to ECOLOGY for acceptance.
- F. The RECIPIENT will operate and maintain the constructed facility for the design life of the facility. Additionally, the RECIPIENT will develop and submit an operations and maintenance (O&M) plan for all Water Quality Best Management Practices to ECOLOGY for review. The O&M plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The O&M plan must also address long-term activities to assure ongoing pollutant removal and flow-control capability of the project in accordance with the design manual.
- G. Upon completion of construction, the RECIPIENT will provide to ECOLOGY:
1. A Stormwater Construction Completion Form signed by a professional engineer indicating that the project was completed in accordance with the plans and specifications and major change orders approved by ECOLOGY's Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion Form can be found on the ECOLOGY website.
 2. GIS compatible project area in Shapefile, Geodatabase file, or ECOLOGY-Approved Equivalent. The project area should include features for treatment facilities and contributing areas.

Task Goal Statement:

The RECIPIENT will oversee and manage construction, communicate with ECOLOGY in a timely fashion, and provide ECOLOGY with all requested project documentation.

Task Expected Outcome:

Project will be constructed on schedule and in accordance with accepted plans.

Recipient Task Coordinator: Daniel Goger

Construction Management

Deliverables

Number	Description	Due Date
3.1	Construction Quality Assurance Plan. Submit to ECOLOGY for review and acceptance. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.2	Pre-construction conference meeting minutes. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.3	Project Schedule. Upload to EAGL using naming convention D3.3 SCHEDULE MO-DA-YEAR and notify ECOLOGY when upload is complete.	
3.4	Revised cash flow estimates when changes in construction schedule occur. Upload to EAGL using naming convention D3.4 CASHFLOW MO-DA-YEAR and notify ECOLOGY when upload is complete.	
3.5	Change Order(s). Upload to EAGL and notify ECOLOGY when upload is complete.	
3.6	Copy of Facility Operation and Maintenance Plan. Submit to ECOLOGY for review and acceptance. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.7	Stormwater Construction Completion Form. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.8	Project Area Shapefile, Geodatabase file, or ECOLOGY-approved Equivalent. The project area should include features for treatment facilities and contributing areas. Upload to EAGL and notify ECOLOGY when upload is complete.	

SCOPE OF WORK

Task Number: 4 **Task Cost: \$601,301.50**

Task Title: Construction

Task Description:

A. The RECIPIENT will, in accordance with ECOLOGY-accepted plans and specifications, complete construction of the project. The construction project will include installation of water quality vaults to mitigate runoff from 6.5 acres of impervious surfaces and 35 acres of lawn and landscaped areas within the Agate Bay sub-basin of Whatcom Lake.

B. Calculate and submit an equivalent new/re-development area for the completed retrofit project(s) using the methods outlined in the Combined Water Quality Financial Assistance Program Funding Guidelines or other ECOLOGY-accepted method.

Task Goal Statement:

Construction of the project in accordance with ECOLOGY-accepted plans and specifications.

Task Expected Outcome:

Constructed project will provide water quality benefits including reductions in total suspended solids (TSS) and phosphorus.

Recipient Task Coordinator: Daniel Goger

Construction

Deliverables

Number	Description	Due Date
4.1	Copy of the contract documents (e.g. bid announcement, bid award and bid tabulations). Upload to EAGL and notify ECOLOGY when upload is complete.	
4.2	Copy of signed and dated construction contract. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Construction progress reports and photos included in progress reports uploaded to EAGL.	
4.4	Completed equivalent new/redevelopment area determination. Upload to EAGL and notify ECOLOGY when upload is complete.	

BUDGET

Funding Distribution EG190306

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

Funding Title: Stormwater Financial Assistance Program - SF
 Funding Effective Date: 07/01/2017
 Funding Type: Grant
 Funding Expiration Date: 06/30/2020

Funding Source:

Title: SFAP - SFY17
 Type: State
 Funding Source %: 100%
 Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%
 Recipient Match %: 25%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

Stormwater Financial Assistance Program - SFAP	Task Total
Project Administration/Management	\$ 0.00
Design Plans and Specs, Environmental Review	\$ 72,000.00
Construction Management	\$ 63,430.00
Construction	\$ 601,301.50

Total: \$ 736,731.50

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Stormwater Financial Assistance Program - SFAP	25.00 %	\$ 184,182.88	\$ 552,548.62	\$ 736,731.50
Total		\$ 184,182.88	\$ 552,548.62	\$ 736,731.50

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

SECTION 1: DEFINITIONS

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defeasance” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY's Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund of that name created by ordinance or resolution of the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed.

“Project Schedule” means that schedule for the project specified in the agreement.

“Reserve Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund

established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY’s Water Quality Program funding website.

C. Cultural Resources: The RECIPIENT shall:

1) The RECIPIENT shall comply with all applicable federal, state and local environmental laws, statutes, regulations, executive orders, and permits.

2) The RECIPIENT shall comply with Ecology’s Archaeological Resource and Historic Property review process. The RECIPIENT agrees that in no case shall construction activities, ground disturbance, or excavation of any kind, begin until provisions of this process are complied with. The RECIPIENT is responsible for developing a complete Inadvertent Discovery Plan (IDP). The IDP must be immediately available upon request by any party. The IDP must be

readily available and be implemented to address any discovery. The RECIPIENT shall implement the procedures in the IDP, and immediately notify ECOLOGY, the Department of Archeology and Historic Preservation (DAHP), and tribal representatives, if human remains, cultural, or archeological resources are discovered in the course of ground disturbing activities. For more details regarding requirements under this provision, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: The RECIPIENT must register as a statewide vendor in order to receive payment reimbursement. Washington State's Department of Enterprise Services (DES) issues all payments. DES maintains a central vendor file for Washington State agency use to process vendor payments. The RECIPIENT can complete the registration process online at:

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. This registration process allows the RECIPIENT to sign up for direct deposit payments, also known as electronic fund transfers (EFT). If the RECIPIENT has questions about the vendor registration process or setting up direct deposit payments contact DES Payee Help Desk at (360) 664-7779 or payeehelpdesk@des.wa.gov.

E. Equipment Purchase: Equipment not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope

of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service (“NRCS”) Field Office Technical Guide for Washington State. However, ECOLOGY may accept as eligible technical assistance, proposed practices, or project designs that do not meet these standards if approved in writing by the NRCS and ECOLOGY.

SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND ONLY CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.
2. Clean Water Act Section 319 Initial Data Reporting Sheet or the “Section 319 Initial Data Reporting” form in EAGL.

A. Data Reporting: The RECIPIENT must complete the “Section 319 Initial Data Reporting” form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project.

B. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology’s Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement:

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

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on pollutant load reductions for each best management practice (BMP) installed as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting”.

B. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.html>. For complete information on how to accomplish the single audit submissions, go to the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

C. Archaeological Resources and Historic Properties (Section 106): See Section 2.C of the terms and conditions of this agreement, the RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

D. Consultant Cap: The RECIPIENT shall ensure that loan or grant funds provided under this agreement to reimburse for costs incurred by individual consultants (excluding overhead) is limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. The Executive Schedule can be found at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed. Contracts for services awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the RECIPIENT with responsibility for the selection, direction, and control of the individuals who shall be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9 for additional information.

E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements: RECIPIENTS shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that the organization’s information in the System for Award Management (SAM), <https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency’s Program for Utilization of Small, Minority, and Women’s Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent

practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.

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

3) Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, and State and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.

4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.

5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including, but not limited to Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

“The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTs shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Opinion of RECIPIENT’s Legal Council
2. Authorizing Ordinance or Resolution
3. Federal Funding Accountability and Transparency Act (FFATA) Form

4. CWSRF Federal Reporting Information form available in EAGL
5. Fiscal Sustainability Plan Certification (only required if the project includes construction of a wastewater or stormwater facility construction)

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

E. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at:
<http://www.ecy.wa.gov/programs/wq/funding/FundPrgrms/CWSRF/SignageGuidanceJune2015.pdf>.

F. Free Service: The RECIPIENT shall not furnish utility service to any customer free of charge if providing that free service affects the RECIPIENT's ability to meet the obligations of this agreement.

G. Insurance: The RECIPIENT shall at all times carry fire and extended coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and with policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments semiannually over the term of this loan "Loan Term" as outlined in this agreement.

I. Loan Repayment:

Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all of the other agreements and obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology
Cashiering Unit
P.O. Box 47611
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a formal amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

J. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Reserve Requirement: For loans that are Revenue-Secured Debt with terms greater than five years, the RECIPIENT must accumulate a reserve for the loan equivalent to at least the Average Annual Debt Service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a Reserve Account in the Loan Fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first.

“Reserve Account” means, for a loan that constitutes Revenue-Secured Debt, an account of that name created in the Loan Fund to secure the payment of the principal and interest on the loan. The amount on deposit in the Reserve Account may be applied by the RECIPIENT (1) to make, in part or in full, the final repayment to ECOLOGY of the loan amount or, (2) if not so applied, for any other lawful purpose of the RECIPIENT once the Loan Amount, plus interest and any other amounts owing to ECOLOGY, have been paid in full.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the loan Fund and used to pay the principal of and interest on the loan. The ULID Assessments in the ULID may be deposited into the Reserve Account to satisfy a Reserve Requirement if a Reserve Requirement is applicable.

K. Maintenance and Operation of a Funded Utility: The RECIPIENT shall at all times maintain and keep a funded Utility in good repair, working order and condition and also shall at all times operate the Utility and the business in an efficient manner and at a reasonable cost.

L. Opinion of RECIPIENT’s Legal Counsel: The RECIPIENT must submit an “Opinion of Legal Counsel to the RECIPIENT” to ECOLOGY before this agreement shall be signed. ECOLOGY will provide the form.

M. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

N. Litigation; Authority: No litigation is now pending, or to the RECIPIENT’s knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

O. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT's financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

P. Sale or Disposition of Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the Utility or any real or personal property comprising a part of the Utility unless:

1. The facilities or property transferred are not material to the operation of the Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the Utility or are no longer necessary, material, or useful to the operation of the Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the Utility; or
3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the Utility from the portion of the Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.
4. Expressed written agreement by the DEPARTMENT.
The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

Q. Sewer-Use Ordinance or Resolution: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater.
- 3) Require that new sewers and connections be properly designed and constructed.

R. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient

ECOLOGY or RECIPIENT funds.

2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.

3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.

4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Intercept State Funds. In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

Documents and Materials. If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

Fees and Expenses. In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

S. User-Charge System: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the utility, to establish a reserve to pay for replacement, to establish the required Loan Reserve Account, and to repay the loan.

WATER QUALITY COMBINED FINANCIAL ASSISTANCE TERMS AND CONDITIONS LAST UPDATED ON 10/04/2016

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

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

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR 180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

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

GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 1/22/2018 VERSION

1. ADMINISTRATIVE REQUIREMENTS

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

2. AMENDMENTS AND MODIFICATIONS

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

3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff and contractors working at the project site.
 - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
 - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
 - d) If any human remains are found while conducting work under this Agreement:

- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

4. ASSIGNMENT

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

5. COMMUNICATION

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

6. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email payeehelpdesk@watech.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

7. COMPLIANCE WITH ALL LAWS

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

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

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

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

8. CONFLICT OF INTEREST

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

9. CONTRACTING FOR GOODS AND SERVICES

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

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

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

10. DISPUTES

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

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

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

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

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

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

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

11. ENVIRONMENTAL DATA STANDARDS

- a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact

the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
 - Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
 - Submit the QAPP to ECOLOGY for review and approval before the start of the work.
- b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: <http://www.ecy.wa.gov/eim>.
- c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

12. GOVERNING LAW

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

13. INDEMNIFICATION

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

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

14. INDEPENDENT STATUS

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

15. KICKBACKS

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

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

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

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

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified

minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

17. ORDER OF PRECEDENCE

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

18. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

19. PROGRESS REPORTING

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

20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to

authorize others to use the same for federal, state, or local government purposes.

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

21. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination. All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of

this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

22. RECOVERY OF FUNDS

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

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

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

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

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

23. SEVERABILITY

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

24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

25. SUSPENSION

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

26. SUSTAINABLE PRACTICES

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

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

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

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

27. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the

RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement. Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the recipient/contractor through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the recipient/contractor. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

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

d) In Event of Termination

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

completed on such documents and other materials.

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

28. THIRD PARTY BENEFICIARY

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

29. WAIVER

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



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-124

File ID: AB2019-124 Version: 1 Status: Introduced
File Created: 02/01/2019 Entered by: MCaldwel@co.whatcom.wa.us
Department: Finance Division File Type: Ordinance
First Assigned to: Council Finance and Administrative Services Committee
Agenda Date: 02/26/2019 Next Mtg. Date: Hearing Date:

TITLE FOR AGENDA ITEM:

Ordinance amending the 2019 Whatcom County Budget, request no. 2, in the amount of \$4,901,742

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental No. 2 requests funding from the General Fund:

1. To appropriate \$132,751 to add Law Library budget to Non Departmental.
2. To decrease appropriation of \$132,751 in Prosecuting Attorney to move Law Library budget to Non Departmental.
3. To appropriate \$68,519 in Sheriff's Office to fund FFY16 Operation Stonegarden program from grant proceeds.
4. To appropriate \$120,000 in Sheriff's Office to fund FFY17 Operation Stonegarden program from grant proceeds.
5. To appropriate \$13,223 in Sheriff's Office to fund inclement weather gear from grant proceeds. From Real Estate Excise Tax Fund I (REET I):
6. To appropriate \$3,189,525 to fund REET I transfer for Courthouse Exterior project. From Public Utilities Improvement Fund (EDI):
7. To appropriate \$1,510,475 to fund EDI transfer for Courthouse Exterior project.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Ordinance No. 2 of the 2019 Budget.pdf

Final Action:
Enactment Date:
Enactment #:

**ORDINANCE NO.
 AMENDMENT NO. 2 OF THE 2019 BUDGET**

WHEREAS, the 2019-2020 budget was adopted November 20, 2018; and,
WHEREAS, changing circumstances require modifications to the approved 2019-2020 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 2019-2020 Whatcom County Budget Ordinance #2018-064 is hereby amended by adding the following additional amounts to the 2019 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Non Departmental	132,751	(75,700)	57,051
Prosecuting Attorney	(132,751)	75,700	(57,051)
Sheriff's Office	201,742	(201,742)	-
Total General Fund	201,742	(201,742)	-
Real Estate Excise Tax Fund I	3,189,525	-	3,189,525
Public Utilities Improvement Fund (EDI)	1,510,475	-	1,510,475
Total Supplemental	4,901,742	(201,742)	4,700,000

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
 WHATCOM COUNTY, WASHINGTON

 Dana Brown-Davis, Council Clerk

 Rud Browne, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied

 Civil Deputy Prosecutor

 Jack Louws, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2019 Supplemental Budget Ordinance No. 2				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Non Departmental	To add Law Library budget to Non Departmental.	132,751	(75,700)	57,051
Prosecuting Attorney	To move Law Library budget from Prosecuting Attorney to Non Departmental.	(132,751)	75,700	(57,051)
Sheriff's Office	To fund FY16 Operation Stonegarden program from grant proceeds.	68,519	(68,519)	-
Sheriff's Office	To fund FY17 Operation Stonegarden program from grant proceeds.	120,000	(120,000)	-
Sheriff's Office	To fund inclement weather gear from grant proceeds.	13,223	(13,223)	-
Total General Fund		201,742	(201,742)	-
Real Estate Excise Tax Fund I	To fund REET I transfer for Courthouse Exterior project.	3,189,525	-	3,189,525
Public Utilities Improvement Fund (EDI)	To fund EDI transfer for Courthouse Exterior project.	1,510,475	-	1,510,475
Total Supplemental		4,901,742	(201,742)	4,700,000

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2693 Fund 1 Cost Center 2630 Originator: M Caldwell

Expenditure Type: Ongoing Year 1 2019 Add'l FTE Add'l Space Priority 1

Name of Request: Assign Law Library to Non Departmental

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4000	Revenues	(\$75,700)
	6000	Expenditures	\$132,751
	Request Total		\$57,051

1a. Description of request:

Move the Law Library, which has traditionally been under the purview of the Prosecuting Attorney to a more appropriate departmental assignment in Non Departmental. In years past the Prosecuting Attorney has been on the Law Library Board of Trustees, that is no longer the case. This supplemental adds the Law Library budget to Non Departmental. Also see companion supplemental removing the 2019 budget from the Prosecuting Attorney's Office (Supplemental ID 2692).

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:

Supplemental Budget Request

Status: Pending

Prosecuting Attorney

Law Library

Suppl ID # 2692

Fund 1

Cost Center 2630

Originator: M Caldwell

Expenditure Type: Ongoing

Year 1 2019

Add'l FTE

Add'l Space

Priority 1

Name of Request: Move Law Library from Prosecuting Attorney to NonD

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4000	Revenues	\$75,700
	6000	Expenditures	(\$132,751)
	Request Total		(\$57,051)

1a. Description of request:

Move the Law Library, which has traditionally been under the purview of the Prosecuting Attorney to a more appropriate departmental assignment in Non Departmental. In years past the Prosecuting Attorney has been on the Law Library Board of Trustees, that is no longer the case. This supplemental removes the Law Library budget from the Prosecuting Attorney's Office. Also see companion supplemental adding the 2019 budget to Non Departmental (Supplemental ID #2693).

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:

LAW LIBRARY

				2019	2020
Cost Center	Object Account	Sub Account	Account Description	Budget	Budget
2630	4336	0103	Reimb-Mntl Hlth App Counsel	10,000	10,000
2630	4341	2203	Civil Filing	1,200	1,200
2630	4341	2211	Antihar Filing	700	700
2630	4341	2212	Civil Filing	13,100	13,100
2630	4341	2333	Civil Fil 20 LL	26,000	26,000
2630	4341	2335	Dom Fac 20 LL	10,000	10,000
2630	4341	2341	Ctr Cros 3rd 20 LL	400	400
2630	4341	2343	Unlawf Det 20 LL	2,000	2,000
2630	4341	2345	Un Det Cmb 20 LL	3,800	3,800
2630	4341	2349	3/5 Fac 20 LL	2,700	2,700
2630	4341	2382	Juvenile Emancipation	300	300
2630	4341	6900	Copy Fees	200	200
2630	4341	6901	Copy Fees-Inmate	300	300
2630	4367	1000	Donations	5,000	5,000
				75,700	75,700
2630	6120		Extra Help	(25,931)	(26,987)
2630	6210		Retirement	(4,025)	(4,230)
2630	6230		Social Security	(2,069)	(2,150)
2630	6255		Other H&W Benefits	-	(6)
2630	6259		Worker's Comp-Interfund	(260)	(260)
2630	6269		Unemployment-Interfund	(95)	(98)
2630	6320		Office & Op Supplies	(1,800)	(1,800)
2630	6340		Books-Publications-Supscr	(62,356)	(62,356)
2630	6659		Building Maintenance Fees	(25,096)	(25,883)
2630	6719		Postage-Interfund	(170)	(170)
2630	6720		Telephone	(865)	(865)
2630	6780		Travel-Educ/Training	(485)	(485)
2630	6949		Insurance Prem-Interfund	(321)	(321)
2630	7159	507	Administrative Cost Allocation	(9,278)	(9,556)
				(132,751)	(135,167)
Net				(57,051)	(59,467)

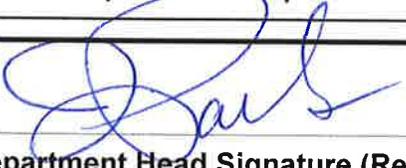
Supplemental Budget Request

Status: Pending

Sheriff	Operations
Suppl ID # 2690	Fund 1
Cost Center 1003516005	Originator: Jacque Korn

Year 1 2019 Add'l FTE Priority 1

Name of Request: FY16 Operation Stonegarden - 2019

X  1-25-19
Department Head Signature (Required on Hard Copy Submission) **Date**

Costs:	Object	Object Description	Amount Requested
	4333.8705	St Homeland Sec Grt Prg	(\$68,519)
	6140	Overtime	\$6,993
	6210	Retirement	\$380
	6230	Social Security	\$535
	6259	Worker's Comp-Interfund	\$185
	6269	Unemployment-Interfund	\$9
	6510	Tools & Equip	\$59,206
	6790	Travel-Other	\$1,211
	Request Total		\$0

1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded \$340,418 to Whatcom County for FY16 Operation Stonegarden (OPSG) Grant Program to enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States (WC Contract #201611036). 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. State and Local law enforcement agencies are not empowered to enforce immigration laws under the OPSG program. Previous Supplemental Budget #2549.

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 remaining OPSG FY16 funds in 2019.

3a. Options / Advantages:

OPSG funds are awarded specifically for projects that improve border security.

3b. Cost savings:

Total OPSG FY16 award was \$340,418. The Sheriff's Office used \$271,899 in previous budget years. The remaining \$68,519 will be used in 2019 as follows: \$8,102 in overtime, \$1,211 in mileage, and \$59,206 in equipment.

4a. Outcomes:

Enhanced patrols will be conducted per contract specifications and timelines. Daily Activity Reports will be completed and sent to the Homeland Security Information Network.

4b. Measures:

The Whatcom County Sheriff's Office and U.S. Border Patrol Blaine Sector will monitor projects and

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 2690

Fund 1

Cost Center 1003516005

Originator: Jacque Korn

expenditures against contract deliverables.

5a. Other Departments/Agencies:

Whatcom County agencies participating in FY16 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:

The following individuals will coordinate projects within their jurisdictions: Special Operations Supervisor Molly Pacheco Patrol - Blaine's Sector; Undersheriff Jeff Parks, Whatcom County Sheriffs Office; Sgt. Russ Mullins, WA Department of Fish & Wildlife; Chief Allen Schubert, Blaine PD; Chief Dan MacPhee, Everson PD; Chief Kevin Turner, Ferndale PD; Chief John Billester, Lynden PD; Chief Daniel DeBruin, Sumas PD; and Chief Ralph Long, Lummi Nation PD.

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) FY2016 OPSG Grant Program, CFDA No. 97.067.

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 2691

Fund 1

Cost Center 1003517004

Originator: Jacque Korn

Year 1 2019

Add'l FTE

Priority 1

Name of Request: *FY17 Operation Stonegarden - 2019*

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	4333.8705	St Homeland Sec Grt Prg	(\$120,000)
	6140	Overtime	\$55,587
	6210	Retirement	\$3,018
	6230	Social Security	\$4,253
	6259	Worker's Comp-Interfund	\$1,470
	6269	Unemployment-Interfund	\$72
	6510	Tools & Equip	\$48,000
	6790	Travel-Other	\$7,600
	Request Total		\$0

1a. Description of request:

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) awarded \$345,000 to Whatcom County for FY17 Operation Stonegarden (OPSG) Grant Program to enhance cooperation and coordination among local, tribal, territorial, state, and federal law enforcement agencies in a joint mission to secure the borders of the United States (W.C. Contract#201805001). 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. State and Local law enforcement agencies are not empowered to enforce immigration laws under the OPSG program. Previous Supplemental Budget #2578.

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 remaining OPSG FY17 funds in 2019.

3a. Options / Advantages:

OPSG funds are awarded specifically for projects that improve border security.

3b. Cost savings:

Total OPSG FY17 award was \$345,000. The Sheriff's Office used \$14,481 in previous budget years. The remaining \$330,519 will be used in 2019 as follows: \$64,400 in overtime, \$7,600 in mileage, \$48,000 in equipment, and \$210,519 to sub-recipients which will be added to the budget through continuing appropriations.

4a. Outcomes:

Enhanced patrols will be conducted per contract specifications and timelines. Daily Activity Reports will be completed and sent to the Homeland Security Information Network.

4b. Measures:

Supplemental Budget Request

Status: Pending

Sheriff

Operations

Suppl ID # 2691

Fund 1

Cost Center 1003517004

Originator: Jacque Korn

The Whatcom County Sheriff's 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 FY17 OPSG are: U.S. Border Patrol Blaine Sector, Whatcom County Sheriff's Office, Washington Department of Fish & Wildlife, the Blaine, Everson, Ferndale, Lynden, and Sumas Police Departments, and Lummi Nation.

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:

The following individuals will coordinate projects within their jurisdictions: Special Operations Supervisor Molly Pacheco Patrol - Blaine's Sector; Undersheriff Jeff Parks, Whatcom County Sheriffs Office; Sgt. Russ Mullins, WA Department of Fish & Wildlife; Chief Allen Schubert, Blaine PD; Chief Dan MacPhee, Everson PD; Chief Kevin Turner, Ferndale PD; Chief John Billester, Lynden PD; Chief Daniel DeBruin, Sumas PD; and Chief Ralph Long, Lummi Nation PD.

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) FY2017 OPSG Grant Program, CFDA No. 97.067.

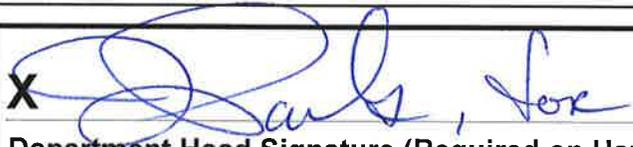
Supplemental Budget Request

Status: Pending

Sheriff	Operations
Suppl ID # 2689	Fund 1
Cost Center 1003518001	Originator: Jacque Korn

Year 1 2019 Add'l FTE Priority 1

Name of Request: SO Grant COB 2018 JAG-Inclement Weather Gear 2019

X  1-25-19
 Department Head Signature (Required on Hard Copy Submission) Date

Costs:	Object	Object Description	Amount Requested
	4333.1673	Byrne JAG Grant	(\$13,223)
	6320.001	Office & Op Supplies	\$13,223
	Request Total		\$0

1a. Description of request:

The Sheriffs Office received 2018 Byrne Justice Assistance Grant (JAG) Program funds through the City of Bellingham to purchase inclement weather protective gear (W.C. Contract #201809001).

Law enforcement must be prepared and equipped to deal with suspects in inclement weather for prolonged periods of time in order to effectively mitigate the threat posed to the public and critical infrastructure. It is essential that all members of the Sheriff's Office have sufficient protective gear and clothing to protect them from the dangerous effects exposure to extreme weather can cause.

SWAT requires specialized outer wear designed for their assignments and operational needs.

1b. Primary customers:

Whatcom County Sheriff's Office SWAT team members.

2. Problem to be solved:

Budget authority is needed to use grant funds to purchase cold weather protective gear in 2019.

3a. Options / Advantages:

The Sheriff's Office will use grant funds rather than local funds for this purchase.

3b. Cost savings:

\$13,223

4a. Outcomes:

The Sheriff's Office objective is to utilize allocated funds to purchase and replace current inclement weather protective gear for SWAT members that is designed for their assignment and operational needs.

4b. Measures:

5a. Other Departments/Agencies:

The City of Bellingham will administer the grant and provide \$13,223 to Whatcom County Sheriff's Office per the grant agreement.

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

6. Funding Source:

The funds originate from U.S. Department of Justice Edward Byrne Memorial JAG Program Fiscal Year 2018, CFDA No. 16.738.

WHATCOM COUNTY
CONTRACT NO.
201809001

ORIGINAL

2018-0547

CITY SECRETARY
CONTRACT NO. 2018-0547

THE STATE OF WASHINGTON
COUNTY OF WHATCOM

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BELLINGHAM, AND COUNTY OF WHATCOM
2018 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this 17th day of August, 2018, by and between The COUNTY of Whatcom, acting by and through its governing body, the County Council, hereinafter referred to as COUNTY, and the CITY of Bellingham, acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Whatcom County, State of Washington, witnesseth:

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, per the grant, Whatcom County Jurisdiction is allocated \$35,780 in grant funding, \$22,557 for the City and \$13,223 for Whatcom County: and

WHEREAS, the CITY agrees to provide the COUNTY \$13,223 from the JAG award for the purchase of Inclement Weather Protective Gear: and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to pay COUNTY a total of \$13,223 of JAG funds.

Section 2.

COUNTY agrees to use \$13,223 for the purchase of Inclement Weather Protective Gear until 2019.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against the "CITY" or "COUNTY"

Section 4.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

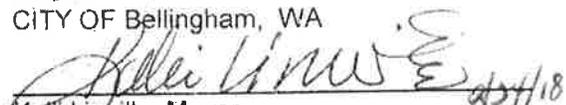
Section 5.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 6.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF Bellingham, WA


Kelli Linville, Mayor

ATTEST:

Brian Henshaw, Finance Department

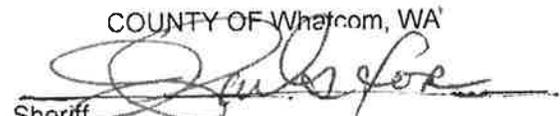
APPROVED AS TO FORM:


City Attorney

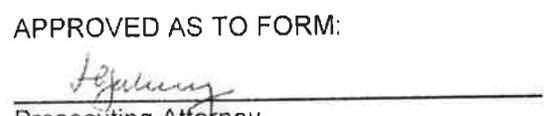


Chief of Police

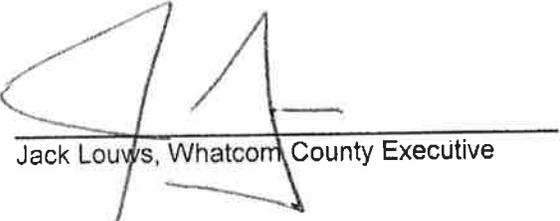
COUNTY OF Whatcom, WA



Sheriff

APPROVED AS TO FORM:


Prosecuting Attorney



Jack Louws, Whatcom County Executive

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2697 Fund 326 Cost Center 32600 Originator: Marianne Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE Add'l Space Priority 1

Name of Request: REET 1 transfer to fund CH Exterior project

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$3,189,525
	Request Total		\$3,189,525

1a. Description of request:

Companion supplemental to transfer REET 1 funding to Courthouse Building Envelope Fund for first phase of construction. Supplemental ID 2695, Amendment #3 to Courthouse Building Envelope project budget. REET 1 funds 69% of the project in proportion of criminal justice vs general government portion of total square footage of courthouse.

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:

Supplemental Budget Request

Status: Pending

Non-Departmental

Suppl ID # 2696 Fund 332 Cost Center 332100 Originator: Marianne Caldwell

Expenditure Type: One-Time Year 1 2019 Add'l FTE Add'l Space Priority 1

Name of Request: EDI Transfer to fund CH Exterior Project

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351	Operating Transfer Out	\$1,510,475
	Request Total		\$1,510,475

1a. Description of request:

Companion supplemental to transfer EDI funding to Courthouse Building Envelope Fund for first phase of construction. Supplemental ID 2695, Amendment #3 to Courthouse Building Envelope project budget. EDI funds 31% of the project in proportion of general government vs criminal justice percentage of total square footage of courthouse.

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:



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-128

File ID: AB2019-128 **Version:** 1 **Status:** Introduced
File Created: 02/01/2019 **Entered by:** MCaldwel@co.whatcom.wa.us
Department: Finance Division **File Type:** Ordinance
First Assigned to: Council Finance and Administrative Services Committee
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Ordinance amending courthouse building envelope project budget (as established through Ordinance 2014-085) third request, in the amount of \$4,700,000 for a total project budget of \$7,377,809

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Requesting Council approval for additional budget authority of \$4,700,000 to be added to the project budget for Fund 359 - Courthouse Building Envelope Fund. Budget will be used to fund the first phase of construction of extensive repairs.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Ordinance Amending Courthouse Building Envelope Project Budget

Final Action:
Enactment Date:
Enactment #:

ORDINANCE NO. _____

ORDINANCE AMENDING COURTHOUSE BUILDING ENVELOPE PROJECT BUDGET (AS ESTABLISHED THROUGH ORDINANCE NO. 2014-075), THIRD REQUEST, IN THE AMOUNT OF \$4,700,000 FOR A TOTAL PROJECT BUDGET OF \$7,377,809.

WHEREAS, Ordinance No. 2014-075 established the project budget for the Courthouse Building Envelope Fund; and

WHEREAS, Ordinances 2017-012 and 2017-028 added further funding for the project; and

WHEREAS, funding to date has been used for HKP Architects, LLP to perform an exterior envelope condition survey, design options, develop a maintenance schedule and construction plans for the chosen repair and maintenance option; and

WHEREAS, the County attempted to implement the first phase of construction in 2018 but failed to attract sufficient bidders for the limited scope project; and

WHEREAS, the scope of the first phase of construction has now been expanded to include brick repair and sealing and replacement of a large roof that was originally planned for further down the schedule, in hopes of making the project more attractive to potential bidders; and

WHEREAS, increased funding for this project is available from Real Estate Excise Tax Fund I and from the Public Utilities Improvement Fund (EDI Fund),

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Ordinance 2014-075 is hereby amended by adding \$4,700,000 of expenditure authority, as described in Exhibit A, to the amended project budget of \$2,677,809, for a total amended project budget of \$7,377,809.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of the Council

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Jack Louws, County Executive
Date: _____

EXHIBIT A

**COURTHOUSE EXTERIOR PROJECT BUDGET
Amendment #3**

Account	Description	Current Amended Project Budget	Amendment #3 to Ord. 2014-075	Total Amended Project Budget
Expenditures				
6190	Direct Billing Rate	\$0	\$50,000	\$50,000
6630	Professional Services	\$250,000	\$310,000	\$560,000
7060	Buildings and Structures	\$2,427,809	\$4,340,000	\$6,767,809
		\$2,677,809	\$4,700,000	\$7,377,809
Revenues				
8301.326	REET I	\$1,925,188	\$3,189,525	\$5,114,713
8301.332	EDI (Public Utilities Improvement Fund)	\$752,621	\$1,510,475	\$2,263,096
		\$2,677,809	\$4,700,000	\$7,377,809

Supplemental Budget Request

Status: Pending

Administrative Services

Facilities Management

Suppl ID # 2695

Fund 359

Cost Center 359100

Originator: Rob Ney

Year 1

2019

Add'l FTE

Priority

1

Name of Request: CH Exterior Project Budget Amendment

X



Department Head Signature (Required on Hard Copy Submission)

1/31/19

Date

Costs:	Object	Object Description	Amount Requested
	6190	Direct Billing Rate	\$50,000
	6630	Professional Services	\$310,000
	7060	Repairs & Maintenance	\$4,340,000
	8301.326	Operating Transfer In	(\$3,189,525)
	8301.332	Operating Transfer In	(\$1,510,475)
	Request Total		\$0

1a. Description of request:

This request is to fund an expanded scope of work for the Courthouse Building Envelope Project 2019 construction phase.

HKP and their design team were selected through an RFQ process and were contracted to develop alternatives to resolve the envelope issue.

HKP's initial report identified three potential options:

Option 1: Replace the entire Courthouse exterior "in-kind" (\$28,282,444)

Option 2: Encase the entire Courthouse in a "Glazed Box", essentially building another building outside the existing building (\$34,071,201)

Option 3: Maintenance and Repair existing infrastructure option. This option was a repair and replace approach on an ongoing basis which enabled the County to financially plan and map out the repairs over time, and with some knowns regarding costs. Option 3 was the selected option and construction plans have been developing since 2016.

The first phase of construction was planned for 2018. The scope of work for this project was limited as investigative work for the brick panels was still underway. The Engineers/Architects estimate for this work was approximately \$1.7 million, with a market adjustment contingency to a high end of \$1.9 million. Only one bid was received and was rejected by the County (Bid amount \$6.704 million).

After the 2018 project was rejected, the County and the design team worked to expand the project in hopes of making the 2019 project more attractive to potential bidders. The 2019 project expands the project scope of work to include the brick repair and sealing, and also replaces a large roof that was scheduled further down the schedule. It is believed the overall project is of sufficient size to attract a larger bidder pool. If constructed, the envelope would be sealed and water intrusion should be eliminated. The Engineer/Architects estimate for this work is approximately \$6.5 million.

This request would fund the construction project (\$6.5 million), provide a project oversight allowance for

Supplemental Budget Request

Status: Pending

Administrative Services

Facilities Management

Suppl ID # 2695

Fund 359

Cost Center 359100

Originator: Rob Ney

Facilities Maintenance staff, and provide contingency funds for unforeseen circumstances.

1b. Primary customers:

The project benefits the general public that utilize the services provided by the County, the County employees that work or do business in the Courthouse, and the Elected officials whose offices are located in the Courthouse.

2. Problem to be solved:

The Courthouse has a water intrusion issue that needs to be corrected. The proposed work should eliminate the water intrusion, and begin some of the long term capital maintenance that has been delayed for many years.

3a. Options / Advantages:

Other options for correcting the envelope issues were considered (re-skinning the Courthouse "in-kind" and a Glazed box approach). This option to repair and maintain the building is the most economical approach, and allows the County to perform this maintenance and repair over time.

Option 3 is an economical method that will seal the exterior of the Courthouse for a fraction of the cost of the other two options. The proposed 2019 construction project will seal the building, and replace two major roofs on the Courthouse. There will still be on-going maintenance and roof repairs, but the Courthouse should be sealed with the successful completion of this year's project.

3b. Cost savings:

The cost savings of Option 3 compared to the next option is approximately \$20 million.

4a. Outcomes:

If funds are provided, and we obtain a successful bid, within our budget, the Construction project is estimated to begin in spring of 2019.

4b. Measures:

The project will be built on-time and within budget.

5a. Other Departments/Agencies:

This project will impact all patrons and employees of the Courthouse. There may be scaffolding and other impediments surrounding the Courthouse during construction. Facilities and the Contractor will work together to minimize impacts of the work.

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

Rob Ney

6. Funding Source:

Transfers from

REET 1 - 69%

EDI - 31%

Also contains an adjustment for EDI to fund \$77,500 more than 31% due to REET making the entire initial \$250,000 contribution to the project budget in 2015. This adjustment will correct current and prior funding percentages to 69% REET and 31% EDI for the entire project budget.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-137

File ID:	AB2019-137	Version:	2	Status:	Agenda Ready
File Created:	02/12/2019	Entered by:	DBrown@co.whatcom.wa.us		
Department:	Council Office	File Type:	Resolution		

First Assigned to: Council Finance and Administrative Services Committee

Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	
---------------------	------------	------------------------	--	----------------------	--

TITLE FOR AGENDA ITEM:

Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution respectfully requesting that the Whatcom County Prosecutor ask the Washington State Attorney General to review and update opinions previously provided related to the eligibility of county council members and commissioners to be appointed to vacant legislative positions

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	HELD IN COUNCIL	Council

Attachments: Resolution Requesting AG's Opinion Re Filling Vacancies, Related Opinions

Final Action:
Enactment Date:
Enactment #:

RESOLUTION NO. _____

RESPECTFULLY REQUESTING THAT THE WHATCOM COUNTY PROSECUTOR ASK THE WASHINGTON STATE ATTORNEY GENERAL TO REVIEW AND UPDATE OPINIONS PREVIOUSLY PROVIDED RELATED TO THE ELIGIBILITY OF COUNTY COUNCIL MEMBERS AND COMMISSIONERS TO BE APPOINTED TO VACANT LEGISLATIVE POSITIONS

WHEREAS, there is no law prohibiting sitting county councilmembers and commissioners from standing for nomination for vacant positions in Washington State House of Representatives or Washington State Senate; and

WHEREAS, over the last 30 plus years Washington Attorney General Opinions numbered AGO 1965-66 No. 20, AGO 1973 No. 101, AGO 1985 No. 1, AGO 1985 No. 15 and AGO 1987 No. 21 (attached) have been individually or collectively been used by one or more political parties to rule sitting county councilmembers and commissioners ineligible to stand for nomination for vacant positions in Washington State House of Representatives and/or Washington State Senate unless they resign prior to being nominated; and

WHEREAS, over the last 30 years subsequent Washington State Supreme Court cases have provided further clarity on this issue; and

WHEREAS, a recent review by Pacifica Law Group (attached) conducted on behalf of the Washington State Association of Counties concluded:

"A sitting county commissioner or councilmember should be eligible for appointment to a vacant state legislative position. The Constitution enumerates the exclusive eligibility requirements and process for filling a legislative vacancy and does not preclude the appointment of a sitting commissioner or councilmember. No statutory provision prohibits such appointment either. The Attorney General's earlier conclusion that a common law rule would bar such appointments is in retrospect mistaken." and

WHEREAS, a recent review by the Skagit County Prosecuting Attorney's office (attached) concluded:

"To require that a candidate not be a sitting Commissioner or Councilmember runs contrary to the rule that the constitution sets the exclusive requirements for eligibility and the strong presumption favoring eligibility. Any issues that may arise due to incompatible offices would be resolved by a candidate's withdrawal from an incompatible office after appointment." and

WHEREAS, the Whatcom County Council recognizes that fair democratic practices allow any sitting City Council Member, Port Commissioner, Public Utility District Commissioner, County Council Member, Conservation District Board Member, or other local elected official who seeks nomination should be eligible for such, provided they recuse him or herself from any vote and discussion about filling that legislative vacancy; and

WHEREAS, a political party that denies eligibility for appointment of any city council member, port commissioner, public utility district commissioner, county council member, conservation district board member, or any other local elected official who is a member of that party, or who affiliates with that party, or has been certified by that party as a candidate of that party, is denying those people of equal protection of the laws of this country; and,

1 WHEREAS, Article II, Section 7 of the Washington Constitution establishes the
2 qualifications for state legislative office: such persons must be a citizen of the United States
3 and a qualified voter in the district where he or she is selected; and
4

5 WHEREAS, in Gerberding v. Munro and Parker v. Wyman, the Supreme Court held
6 that the Constitution establishes the exclusive qualifications for state legislative offices and
7 may not be added to by statute, and furthermore that no provision of the Constitution
8 prohibits a sitting county commissioner or councilmember from being eligible for
9 appointment nor precludes county commissions or councils from appointing one of their own
10 members; and
11

12 WHEREAS, therefore any rule prohibiting a sitting county council member from
13 being appointed to the State Legislature often eliminates the most qualified candidates from
14 consideration for appointment, and is not in the best interests of the county's constituents;
15 and
16

17 WHEREAS, the Whatcom County Council represents citizens in the 40th and 42nd
18 Districts and could be required to deal with another legislative appointment again in the
19 immediate future for any number of reasons.
20

21 NOW, THEREFORE, BE IT RESOLVED that Whatcom County Council respectfully
22 request that the Whatcom County Prosecuting Attorney ask the Attorney General for the
23 State of Washington to review and update its previous opinion letters on the matter without
24 delay.
25

26 BE IT FINALLY RESOLVED that if such review does conclude that there any
27 additional limitations or considerations (beyond the need for the nominee to recuse him or
28 herself from any vote and discussion about filling that legislative vacancy) that would
29 impact the eligibility of a sitting county council member from being nominated for
30 appointment, that any and all options for curing such limitations or considerations are
31 identified and included in the Attorney General's response.
32

33 APPROVED this ____ day of _____, 2019.
34

35
36 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

37
38
39 _____
Dana Brown-Davis, Clerk of the Council

40
41
42
43 APPROVED AS TO FORM:
44
45
46 _____

47 Civil Deputy Prosecutor
48
49
50
51

Washington Attorney General Opinions

1965.

AGO 1965-66 No. 20.

May 26, 1965

[Orig. Op. Page 1]

PRIVATE

OFFICES AND OFFICERS --- COUNTY --- AUDITOR --- VACANCY IN OFFICE ---
APPOINTMENT BY COUNTY COMMISSIONERS --- COMMISSIONER NOT ELIGIBLE FOR
APPOINTMENT --- RESIGNATION --- EFFECT.

(1) A board of county commissioners may not appoint one of its members to fill a vacancy in the office of county auditor.

(2) Same: If a county commissioner were to resign his office for the sole purpose of accepting an appointment as the county auditor under a prior agreement to that effect with the board of which he was a member, the member would still be ineligible for the appointment notwithstanding his resignation.

Honorable George A. Kain
Prosecuting Attorney
Spokane County Courthouse
Spokane, Washington 99201

Cite as: AGO 1965-66 No. 20

Dear Sir:

By letter previously acknowledged you have requested an opinion of this office upon the following questions:

(1) "May a board of county commissioners appoint one of its members to fill a vacancy existing in the office of county auditor?"

(2) "If a board member may be appointed to fill such a vacancy, may he vote for himself if

necessary to provide a majority vote for himself to fill the vacancy?"

(3) "If the answers to (1) and (2) are in the negative, would the situation be changed if a county commissioner resigned as such prior to being appointed as county auditor, where such resignation was made for the sole purpose of accepting an appointment from the board from which he resigned, by prior agreement with the other board members that such would be the result of his resignation?"

We answer your first question in the negative for the reasons set forth in our analysis. Consideration of your second question is thereby rendered unnecessary. We answer your third

[Orig. Op. Page 2]

question in the negative subject to the qualifications set forth in our analysis.

ANALYSIS

The function of a board of county commissioners in regard to filling vacancies occurring in any county office is set forth in Article XI, § 6, of the Washington Constitution as follows:

"The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified."

This constitutional provision has been procedurally implemented by legislation. RCW 36.16.110 provides:

"The board of county commissioners in each county shall, at its next regular or special meeting after being appraised of any vacancy in any county, township, precinct, or road district office of the county, fill the vacancy by the appointment of some person qualified to hold such office, and the officers thus appointed shall hold office until the next general election, and until their successors are elected and qualified."

Thus, clearly, any vacancy existing in the office of county auditor must be filled by an appointment made by the board of county commissioners of the particular county. Furthermore, the person appointed must be a person who is qualified to hold the office to which he is appointed---in this case, the office of county auditor.

It is a well-established common-law principle that a public officer may not simultaneously hold two incompatible offices. This principle has been recognized and applied by this office on innumerable occasions in the past, and by the Washington supreme court as recently as 1957. See, *Kennett v. Levine*, 50 Wn.2d 212, 310 P.2d 244 (1957), in which the court observed as follows at page 216:

". . . it has been long and universally recognized that no one should hold incompatible offices.
Throop on Public Officers

[Orig. Op. Page 3]

(1892), 37, § 33; People ex rel. Ryan v. Green (1873), 5 Daly (N.Y.) 254, 46 How. Pr. 169.

"Offices are incompatible when the nature and duties of the offices are such as to render it improper, from consideration of public policy, for one person to retain both. State ex rel. Klick v. Wittmer (1914), 50 Mont. 22, 144 Pac. 648; State ex rel. Nebraska Republican State Central Committee v. Wait (1912), 92 Neb. 313, 138 N.W. 159; State v. Anderson (1912), 155 Iowa 271, 136 N.W. 128; Mechem on Public Officers (1890), 268, § 422. Or, as was said in Barkley v. Stockdell (1933), 252 Ky. 1, 66 S.W. (2d) 43:

"The question [of incompatibility] is . . . whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest."

There is no one universal criterion of incompatibility; the determination rests upon the circumstances of each case. However, certain general considerations are stated by the various authorities. One significant consideration is the question of whether one of the two offices is subordinate to the other. This concept was expressed by the supreme court of Montana in State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 Pac. 648 (1914), as follows:

"Public offices are 'incompatible' when the incumbent of one has power of removal over the other, or when one has power of supervision over the other, . . ."

A perusal of the statutes relating to the duties of a county auditor make it perfectly obvious that the office of county auditor is incompatible, on the basis of the above stated test, with the office of member of the board of county commissioners. Particularly to be noted is RCW 36.32.110, which provides:

"The county auditor shall be the clerk of the board of county commissioners, and shall attend its meetings and keep a record of its proceedings."

[Orig. Op. Page 4]

The specific duties of the county auditor, as clerk of the board of county commissioners are set forth in RCW 36.22.010 (9) as follows:

"(9) As clerk of the board of county commissioners he shall:

"Record all of the proceedings of the board;

"Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

"Record the vote of each member on any question upon which there is a division or at the request of any member present;

"Sign all orders made and warrants issued by order of the board for the payment of money;

"Record the reports of the county treasurer of the receipts and disbursements of the county;

"Preserve and file all accounts acted upon by the board;

"Preserve and file all petitions and applications for franchises and record the action of the board thereon;

"Perform all other duties required by any rule or order of the board." (Emphasis supplied.)

That the offices of county auditor and member of the board of county commissioners cannot simultaneously be held by the same person is further demonstrated by RCW 36.22.110, providing in material part:

". . . The county auditor, during his term of office, and any deputy appointed by him is disqualified from performing the duties of any other county officer or acting as deputy for any other county officer. Nor shall any other county officer or his deputy act as auditor or deputy, or perform any of the duties of said office."

[Orig. Op. Page 5]

Consequently, for this reason alone it is apparent that a board of county commissioners may not appoint one of its members to fill a vacancy existing in the office of county auditor. In regard to this point, see, also, 42 Am.Jur., Public Officers, § 97 (page 955), where it is said:

"A public office is a public trust, and should persons to be appointed thereto should be selected solely with a view to the public welfare. It goes without saying that the power of appointment to public office is to some degree limited by public policy and by statutory provisions which invalidate the appointment of relatives, or which make certain persons ineligible to office. An appointment of an ineligible person is a nullity." (Emphasis supplied.)

A further ramification of this principle is described in the very next paragraph of this same text authority as follows:

"An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost

freedom from personal interest in such appointments. So, it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." (Emphasis supplied.)

Though no decisions of the Washington supreme court are cited in support of this proposition (for the reason that the precise question has apparently never been considered by the Washington court), the rule is supported by a number of well-reasoned decisions from other jurisdictions. In particular see, *State ex rel. Bove v. McDaniel*, 52 Del. 304, 157 A.2d 463 (1960), and *Hetrich v. Co. Commissioners*, 222 Md. 304, 159 A.2d 642 (1960). In the latter case the Maryland supreme court was concerned with the particular application to be given to the doctrine of incompatibility of public offices in a case where incompatibility was present by reason of the fact that one of the two offices in question held the power of appointment as to the other office. The court observed as

[Orig. Op. Page 6]

follows:

"The general rule at common law is that if an officer accepts a second office, which is incompatible with the first, he vacates the first . . . Many courts have adopted a qualification to the general rule if the one who accepted the second office was ineligible for that office. It is held in such instances that the attempted appointment was void, a nullity, and that the second acceptance was illusory, some courts deciding that the incumbent was not even a de facto officer, others that he was.

". . .

"The ineligibility which makes the appointment to a second office a nullity has not been limited to that created by constitution or statute. Even in the absence of these formalized prohibitions, at common law, on the ground of public policy a member of an appointing body is ineligible for appointment to a conflicting office by that body, even though his own vote is not essential to the appointment. *McQuillin, Municipal Corporations*, Sec. 12.75; *67 C.J.S., Officers*, Sec. 20; *42 Am.Jur., Public Officers*, Sec. 97, p. 955; *Annotation: 31 L.R.A. (N.S.) 575. . . .*

"The cases ground the public policy prohibition on the need for impartial official action, without suspicion of bias which may be against public interest. They say the appointing board cannot absolve itself of ulterior motives if it appoints one of its own, whether or not his vote was necessary to the appointment, since the opportunity improperly to influence the other members of the board is there. The necessity that public bodies be free from personal influence in making appointments to office cannot be secured when the appointee has the real opportunity his associations and relations afford to place his colleagues under obligations they may feel require repayment."

[Orig. Op. Page 7]

On the basis of this line of authority we answer your first question in the negative. A board of county commissioners may not appoint one of its members to fill a vacancy existing in the office of county auditor. To the extent that this conclusion conflicts with the views stated in an attorney general's opinion dated August 17, 1927, to the prosecuting attorney of Stevens county [[1927-28 OAG 155]], sanctioning the appointment by a board of county commissioners of one of its members to a vacancy in the office of county sheriff, the prior opinion is hereby overruled.

Since a member of the board of county commissioners cannot be appointed to fill a vacancy existing in the office of county auditor, it is unnecessary for us to consider your second question relative to whether the board member who is interested in being appointed to fill this vacancy can, as a county commissioner, vote upon the question of his appointment as county auditor.

Finally, you have asked whether the situation would be changed if the county commissioner in question resigned as such prior to being appointed as county auditor. Notably, however, the question stipulates that:

". . . such resignation was made for the sole purpose of accepting an appointment from the board from which he resigned, by prior agreement with the other board members that such would be the result of his resignation?"

Given this particular stipulated factual situation, we believe that the situation would in no manner be changed. In thus concluding we are guided by the approach taken by the supreme court of Delaware in *State ex rel. Bove v. McDaniel*, 52 Del. 304, 157 A.2d 463 (1960), *supra*. In that case the vacancy had been created in the office of mayor of the city of New Castle, Delaware, by reason of death of the incumbent. Thereupon a special meeting of the city council was held for the purpose of making an appointment to fill this vacancy. Faced with a charter provision expressly prohibiting the city council from appointing one of the members thereof to this office, McDaniel, the council member desiring to be appointed mayor, resigned. However, his resignation was made with the express understanding and agreement of the other members of the council that he was resigning for the sole purpose of accepting an appointment as

[Orig. Op. Page 8]

mayor.

Upon thereafter being appointed to the office of mayor, McDaniel's right to hold office was challenged in court. The Delaware supreme court held as follows:

". . . Both the common law and the statute demand that the power of appointment be exercised fairly and impartially. In order to attain this purpose it is important that the deliberations of the appointing body not only be free from wrongdoing but free from suspicion of wrong as well. [Citing cases] For this reason the general law has been laid down -- reinforced in many instances by

appropriate statutes -- that it is contrary to public policy to permit a Board to exercise its power of appointment by designating some one from its own body. [Citing cases and 42 Am.Jur. 97, p. 955] Such purpose cannot be attained when the appointee as a member of the appointing body has the opportunity for a closer association and influence upon the members much greater than would be the case where the persons considered for appointment were not members of the appointing body.

"In the present case the minutes of the Council demonstrate conclusively, we think, the fictitious nature of Council's action. The successive resignations and the successive filling of the vacancies thus created compel the conclusion that the whole thing was agreed upon in advance. It was one complete transaction, and was merely a subterfuge resorted to in order to nullify the charter provisions. The resignation of McDaniel as President of City Council and the resignation of Tobin as a member of the Council followed immediately by the election of Tobin as President of City Council, so that he in turn might vote for McDaniel as Mayor, were the same as if McDaniel and Tobin

[Orig. Op. Page 9]

had each voted for himself. In such case the law will look beneath the form used to comply technically with the requirements of the statute and determine the purpose to be accomplished. If that purpose should be contrary to public policy, the appointing body will not be permitted by the juggling of positions to do indirectly what it could not do directly. [Citing cases]

". . . The gyrations of the members of the Council at the meeting in producing the resignations of certain of its members and their almost immediate election to other offices for the very obvious purpose of appointing the resigning members of the appointing body to other offices placed the defendants in the same position as if they had been technically members of the Council at the time of their election. As far as they relate to the right of defendants to hold the respective offices to which they were allegedly appointed, the resignations and elections must be considered a nullity. [Citing cases]

"We are of the opinion that under both Section 8 of the Charter of the City of New Castle and under the common law, the filling of the vacancy in the office of Mayor by defendant McDaniel and the vacancy in the office of City Council by the defendant Tobin were illegal and void."

This is not to say, of course, that the same result would necessarily follow in the absence of the specific factual pattern involved, wherein the resignation was made by pre--arrangement [[prearrangement]]solely to qualify for appointment to the new office---which appointment was pre-arranged [[prearranged]]prior to the time of resignation.

[Orig. Op. Page 10]

We trust the foregoing will be of assistance to you.

Very truly yours,

JOHN J. O'CONNELL

Attorney General

PHILIP H. AUSTIN

Assistant Attorney General

Washington Attorney General Opinions

1973.

AGLO 1973 No. 101.

October 24, 1973

[Orig. Op. Page 1]

PRIVATE

OFFICES AND OFFICERS -- STATE -- LEGISLATOR -- COUNTY COMMISSIONERS --
VACANCY IN OFFICE.

(1) A board of county commissioners may not appoint one of its members to fill a vacancy in the state House of Representatives.

(2) If a county commissioner were to resign for the sole purpose of accepting an appointment to the House of Representatives under a prior agreement to that effect with the board of which he was a member, the member would still be ineligible for the appointment notwithstanding his resignation.

Honorable Kenneth O. Eikenberry
State Representative, 36th District
Suite 500 Third & Lenora Building
Seattle, Washington 98121

Cite as: AGLO 1973 No. 101

Dear Sir:

By recent letter you have asked for our opinion on the following three questions:

"(1) If a vacancy occurs in one position of a house of representative district which is entirely within a single county, may a board of county commissioners appoint one of its members to fill such vacancy?

"(2) If a board member may be appointed to fill such a vacancy, may he vote for himself if necessary to provide a majority vote for himself to fill the vacancy?

"(3) If the answers to (1) and (2) are in the negative, would the situation be changed if a county commissioner resigned as such prior to being appointed as the representative of the district, where such resignation was made for the sole purpose of accepting an appointment from the board from which he resigned, by prior agreement with the other board members that such would be the result of his resignation?"

We answer your first question in the negative, thereby rendering consideration of your second question unnecessary; we also answer question (3) in the negative.

ANALYSIS

In submitting this request you have indicated an awareness of AGO 65-66 No. 20 [[to George A. Kain, Prosecuting Attorney, Spokane County on May 26, 1965]], an opinion written to the then prosecuting attorney of Spokane county on May 26, 1965, in which precisely these same questions were asked with respect to the filling of a vacancy in the office of county

[Orig. Op. Page 2]

auditor. Like the position of state representative from a legislative district located entirely within a single county, vacancies occurring in that or any other partisan county office are also filled by appointment by the applicable county commissioners. See, Wash. Const., Article II, § 15 (Amendment 52) and compare this provision with Article XI, § 6 as it then read. Accordingly, we responded to the first question there posed by concluding that a board of county commissioners may not appoint one of its own members to fill a vacancy in the office of county auditor, relying, largely, upon certain principles which were expressed in 42 Am.Jur., Public Officers, § 97 (p. 955) as follows:

"An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost freedom from personal interest in such appointments. So, it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." (Emphasis supplied.)"(fn1)

Then, noting that this answer rendered any further consideration of question (2) unnecessary, we turned to and answered the prosecuting attorney's third and final question as follows:

"If a county commissioner were to resign his office for the sole purpose of accepting an appointment as the county auditor under a prior agreement to that effect with the board of which he was a member, the member would still be ineligible for the appointment notwithstanding his resignation."

Accord, State ex rel. Bove v. McDaniel, 52 Del. 304, 157 A.2d 463 (1960), a case that was

factually "on all fours" from which we quoted extensively on pp. 8 and 9 of this prior opinion.

[Orig. Op. Page 3]

We can see no basis at this time for distinguishing the question which you have asked with respect to the filling of a legislative vacancy from those which were considered in this earlier, 1965 opinion and, likewise, we can see no basis for any present departure from the underlying principles enunciated therein. For this reason, we must likewise answer your first and third questions in the negative - with these answers similarly rendering consideration of your second question unnecessary.

In so concluding we should, however, note here as we did in AGO 65-66 No. 20, that insofar as question (3) is concerned, our negative answer thereto

". . . is not to say, of course, that the same result would necessarily follow in the absence of the specific factual pattern involved, wherein the resignation was made by prearrangement solely to qualify for appointment to the new office--which appointment was pre-arranged [[prearranged]] prior to the time of resignation."

We trust the foregoing will be of some assistance to you.

Very truly yours,

SLADE GORTON

Attorney General

PHILIP H. AUSTIN

Deputy Attorney General

Footnotes:

1. Accord, 63 Am.Jur.2d Public Officers, § 96 (p. 960).

Washington Attorney General Opinions

1985.

AGO 1985 No. 1.

January 7, 1985

[Orig. Op. Page 1]

PRIVATE

OFFICES AND OFFICERS -- STATE -- LEGISLATOR -- APPOINTMENT OF COUNTY COMMISSIONER TO VACANCY IN MULTI-COUNTY LEGISLATIVE POSITION

If a vacancy occurs in one position of a House of Representatives district which encompasses two counties and part of a third county, the boards of county commissioners of the three counties, acting jointly pursuant to Wash. Const. Art. II, § 15 (Amendment 52), may not appoint one of their own members to fill such vacancy.

Honorable Robert K. Leick
Prosecuting Attorney
Skamania County
Courthouse Building
Stevenson, Washington 98648

Cite as: AGO 1985 No. 1

Dear Sir:

By recent letter you requested our opinion on the following question:

If a vacancy occurs in one position of a House of Representatives district which encompasses two counties and part of a third county, may the boards of county commissioners of the three counties, acting jointly pursuant to Wash. Const. Art. II, § 15 (Amendment 52), appoint one of their own members to fill such vacancy?

We answer your question in the negative for the reasons set forth in our analysis.

ANALYSIS

In submitting this request you have indicated your awareness of AGLO 1973 No. 101, copy

enclosed, in which the same question was asked in the context of a vacancy in the House of Representatives from a legislative district located entirely within a single county. In that opinion, relying on another prior opinion (AGO 65-66 No. 20) relating to the ability of a board of county commissioners to appoint one of its own members to a vacant county elective office, we answered in the negative. The basis for our

[Orig. Op. Page 2]

answer, in both instances, was the common law principle of public policy set forth in 42 Am.Jur., Public Officers, § 97 (page 955) as follows:

"An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost freedom from personal interest in such appointments. So, it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." (Emphasis supplied)

The text material upon which we thus relied has since been updated by its publisher. The current version now appears in 63A Am.Jur.2d, Public Officers and Employees, § 100 (page 743). The rule, however, remains essentially the same. We quote, for ease of comparison:

"An officer entrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost freedom from personal interest in such appointments. Thus, it is contrary to public policy to permit an officer having an appointing power to use such power to confer an office on himself in the absence of specific legislative authorization, or to permit an appointing body to appoint one of its own members. . . ."

In addition the same rule is stated, with supporting case authority, in 67 CJS, Officers and Employees, § 23(a) and in 3 McQuillin, Municipal Corporations (3rd ed.), § 12.75. In turn, while no Washington cases appear to have considered the question, we have no reason to think that our court would rule otherwise if presented with the issue.

We further note that all three situations^(fn1) fall within the purview of the same provision of our State Constitution, Article II, § 15 (Amendment 52). Under that provision the board of county commissioners (or other county legislative authority) is to fill

[Orig. Op. Page 3]

vacancies both in the legislature and in partisan county elective offices--with the qualification that in the case (as here) of a multi-county legislative district,

". . . the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, . . ."

Conversely, in the case of a single-county legislative district such as was before us in AGLO 1973 No. 108, *supra*, the nominating process involves the county central committee rather than the

state central committee and the appointment is made by the single board of county commissioners or other legislative authority.

Your request calls upon us to consider (a) whether AGLO 1973 No. 101 is still a correct statement of the law; and (b) whether there is any basis for not applying that rule in the case of a multi-county (rather than single-county) legislative district.

In response to the first of those questions we have already seen that the principle, i.e., that it is contrary to public policy ". . . to permit an appointing body to appoint one of its own members . . .", has not been altered by any subsequent court decisions. As for the second, the only difference between the appointment process in a single-county legislative district and in a multi-county district is purely a matter of degree. The appointing body in the latter situation is larger and thus the prospective appointee may be only one of six, or nine, members of the body rather than one of three in a typical single-county district governed by a three-member board of county commissioners. But nowhere in the cases do we find any indication that the size of the appointing body effects the applicability of the public policy principle.

Of course, consistent with the foregoing there may well be instances where, by reason of some specific statute, county or city charter, or local ordinance it is permissible for a multi-member appointing authority to select one of its own members for a particular appointment. All that means, however, is that the applicable common-law principle has been overridden in the particular instance by specific legislation. Accord RCW 4.04.010. In addition, it should similarly be understood that even under the common-law rule it is only those public officials who are members

[Orig. Op. Page 4]

of the appointing authority itself who are disqualified. Thus, contrary to a further thought expressed in your letter, the rule we here apply does not also serve to disqualify a member of the state or county central committee (which merely nominates) from being appointed to a legislative vacancy. Moreover, we also note that members of a state or county central committee hold political, and not public, offices.

With those points in mind, however, we adhere to the reasoning of our prior opinions and, based thereon, answer your present question, as well, in the negative. We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

PHILIP H. AUSTIN

Senior Deputy Attorney General

Footnotes:

1. I.e., the two which were covered by our prior opinions and the situation involved in your present request.

Washington Attorney General Opinions

1985.

AGO 1985 No. 15.

September 13, 1985

[Orig. Op. Page 1]

PRIVATE

OFFICES AND OFFICERS -- STATE -- LEGISLATOR -- APPOINTMENT OF FORMER COUNTY COMMISSIONER TO VACANCY IN MULTI-COUNTY LEGISLATIVE POSITION

A former member of a board of county commissioners is eligible for appointment to a vacant Senate seat if the former commissioner has resigned prior to the appointment, the resignation is made without qualification and there is no pre-arranged agreement that the former member will be appointed.

Honorable C. Danny Clem
Kitsap County Prosecuting Attorney
Kitsap County Courthouse
614 Division Street
Port Orchard, Washington 98366

Cite as: AGO 1985 No. 15

Dear Mr. Clem:

By a letter dated September 9, 1985, you have requested an opinion of this office upon the following question:

"Is a member of a board of county commissioners (which county is within a joint legislative district) nominated by the state central committee, eligible to fill a vacancy in the office of senate if that commissioner resigns prior to the appointment process?"

We answer your question in the affirmative.

ANALYSIS

As noted in your letter this office has previously considered somewhat similar questions albeit in

different fact situations. In AGO 65-66 No. 20, copy enclosed, we held that a county commissioner could not resign and then accept a board appointment to a subordinate county position where the resignation was made for the sole purpose of, and conditioned upon, such appointment.(fn1)

[Orig. Op. Page 2]

Similarly, in AGLO 1973 No. 101, copy enclosed, relying on AGO 65-66 No. 20, we held that a board of county commissioners could not appoint one of its own members to a vacancy in a legislative district located entirely within a single county. Most recently, in AGO 1985 No. 1, copy enclosed, we held that where a vacancy occurs in a joint legislative district, the county commissioners of the counties involved could not appoint one of their own members to fill the vacancy.

Your question, on the other hand, is addressed not to the filling of a vacancy in a subordinate county position, but rather a vacancy in a Senate seat. Further, and most significantly, your question involves an unqualified and unconditional resignation by the commissioner prior to the appointment process.

In AGO 65-66 No. 20, we noted that our answer to the question therein addressed was limited to ". . . this particular stipulated factual situation . . ." (page 7) and further that ". . . the same result would [not] necessarily follow in the absence of the specific factual pattern involved . . ." (page 9). Our analysis relied heavily on a decision of the Supreme Court of Delaware(fn2) which involved a conditional resignation from a city council made solely for the purpose of qualifying for appointment to a vacant office, which appointment had previously been agreed upon among the remaining city council members who would fill the vacancy.

The other two prior opinions of this office mentioned above, although devoid of the peculiar facts in AGO 65-66 No. 20, addressed the eligibility of sitting county commissioners. Our analysis of the questions thus posed turned on public policy considerations which would arise if a public body exercised its power of appointment in favor of one of its own members.

In the question you pose, however, we see none of the factual elements which led us to the conclusion we reached in AGO 65-66 No. 20. Likewise, none of the public policy considerations which compelled our answers in AGLO 1973 No. 101 and AGO 1985 No. 1 are present here. This is so because a person who has unconditionally and without qualification resigned from the county commission is in

[Orig. Op. Page 3]

a situation (with respect to this question) which is indistinguishable from that of any other

PRIVATE

citizen.

Thus, we conclude that there is no bar to the appointment by a board of county commissioners of a former member of that board to fill a vacancy in a Senate seat, where the former member resigns prior to the appointment process, such resignation is made without qualification, and there is no pre-arranged agreement that the former member will be appointed.

We trust the foregoing will be of some assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

WILLIAM L. WILLIAMS

Assistant Attorney General

Footnotes:

1. In that same opinion, we also held that the office of county commissioner was incompatible with the office of county auditor, and that a member of the board of county commissioners, which was charged by law with the responsibility of filling a vacancy in the office of county auditor, could not be appointed to fill that vacancy so long as the commissioner remained on the board.
2. State ex rel. Bove v. McDaniel, 52 Del. 304, 157 A.2d 463 (1960).

Washington Attorney General Opinions

1987.

AGO 1987 No. 21.

October 21, 1987

[Orig. Op. Page 1]

PRIVATE

OFFICES AND OFFICERS -- STATE -- LEGISLATOR -- NOMINATION OF COUNTY COMMISSIONER TO VACANCY IN MULTI-COUNTY LEGISLATIVE POSITION

A member of a board of county commissioners (which county is within the joint legislative district) is not eligible to be nominated by a state central committee to fill a legislative vacancy from a joint legislative district.

Honorable Brian Ebersole
State Representative, 29th District
5716 Pacific Avenue
Tacoma, Washington 98408

Cite as: AGO 1987 No. 21

Dear Representative Ebersole:

By letter dated October 14, 1987, you have requested our opinion on the following two (2) questions:

1. Is a member of a board of county commissioners (which county is within the joint legislative district) eligible to be nominated by a state central committee to fill a legislative vacancy in the joint legislative district? 2. If your answer to Question No. 1 is in the affirmative, would your answer be the same if the member of the board of county commissioners has actively campaigned for nomination and appointment to the legislative vacancy?

For reasons which appear in the analysis below, we answer your first question in the negative. Our negative answer to your first question renders it unnecessary to answer your second question.

ANALYSIS

Your question presents yet another factual situation relating to a series of opinions we have issued over the past 20 years

[Orig. Op. Page 2]

concerning the authority of county commissioners to appoint one of their own members to vacant positions over which they have power of appointment.(fn1)

When a legislative vacancy occurs in a legislative district which is wholly within a single county, the county commissioners fill that vacancy by appointing one of three nominees provided by the political party's county central committee. If the county commissioners fail to appoint within sixty days after the vacancy occurs, the Governor makes the appointment within thirty days thereafter. If the vacancy occurs in a joint legislative district, it is the state central committee which nominates three persons for appointment by joint action of the boards of county commissioners of the counties comprising the joint legislative district. Again, if the appointment is not made within the sixty days after the vacancy occurs, the Governor makes the appointment.

In the earliest of the opinions, AGO 65-66 No. 20, we found that a board of county commissioners could not appoint one of its own members to a vacant county elective office. In AGLO 1973 No. 101 (copy enclosed), we applied the same rule to an appointment to fill a vacancy in a legislative district located entirely within a single county. More recently, in AGO 1985 No. 1, we decided that the same rule applies to vacancies in a joint legislative district, and we found that none of the members of any of the county legislative authorities participating in the appointment were eligible to fill the vacancy. Finally, in AGO 1985 No. 15, we found that a county commissioner who resigns his or her commissioner position prior to the appointment process, with no conditions and with no prior commitment for appointment to a vacancy, would be eligible for appointment to a vacant legislative seat.

Your present question concerns the possible situation which would occur if a county commissioner were to propose to resign

[Orig. Op. Page 3]

after nomination by the state central committee to a vacant legislative seat, but before the county legislative bodies from the counties in the joint legislative district meet to make the actual appointment.

Although our previous opinions did not cover this precise situation, we think the clear implication of their reasoning is that, since a county commissioner in the circumstances described is ineligible for appointment to the vacant position, he or she is similarly ineligible for nomination.

Prior to the approval of Amendment 32 to the Washington State Constitution in 1956, the state

central committees of the political parties had no official role to play in the selection of an appointee to fill a vacancy in a legislative position. From statehood until 1930, the state constitution did not provide for any form of appointment to fill a legislative vacancy, but left the process to a special election. Washington State Const. art. 2, § 15 (original language). With the adoption of Amendment 13 in 1930, the county commissioners gained the power (acting alone in legislative districts entirely within a county and jointly in joint legislative districts) to fill temporary vacancies occurring in either house of the legislature to serve until the next general election. With the adoption of Amendment 33 in 1956, the people of the state for the first time imposed a requirement that the appointed legislator be of the same political party as the legislator whose office had been vacated, and provided for nomination of three persons by the county central committee (in the case of districts entirely within a county) or the state central committee (in the case of joint legislative districts) with the county commissioners to make the final appointment as before. This basic scheme is left unchanged by the most recent amendment to art. 2, § 15 (Amendment 52, adopted in 1968), which left the constitutional provision in question in the current form:

Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district, county or county commissioner district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and in case a [Orig. Op. Page 4]majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district, county or county commissioner district and of the same political party as the legislator or partisan county elective officer whose office has been vacated, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated.

Const. art. 2, § 15 (emphasis added).

Prior to 1930, the county commissioners were free to select any qualified person to fill a legislative vacancy, and the only qualifications were the constitutional ones for the position. See Const. art. 2,

§ 7.

Since the enactment of Amendment 32 however, the authority of county commissioners to make a choice has been drastically constricted by the additional requirement that the commissioners choose from three names submitted by the appropriate party central committee, and the further requirement that the replacement legislator be of the same political party as his or her predecessor. Prior to the critical amendments, the commissioners were free to select any qualified voter resident in the district; subsequently, they were limited to selecting from a list of three names.

[Orig. Op. Page 5]

It follows that the role of the state central committee (or the county central committee in a district located within a single county) is far more than that of a mere proponent of possible candidates for a vacancy. Because the commissioners must choose from a list of only three names selected by the state central committee, most of the important selection work in choosing a candidate falls to the committee, which narrows the range of choices from several thousand voters eligible for the position to merely three.

In our previous opinions, citing well-accepted common law principles, we found that a county commissioner is ineligible for consideration for appointment to a vacant position over which the board on which he or she serves has the power of appointment. Like persons who are not resident in the legislative district, or residents of the district who are not qualified voters, the county commissioner is simply not on the list of persons qualified to accept the appointment, so long as he or she holds the county legislative position.

Although art. 2, § 15 does not explicitly cover the point, a necessary implication of the process established in the constitution is that the state central committee submit the names of three qualified candidates for a vacant position. If the committee were permitted to submit one or more names of persons not qualified to fill the vacancy in question, the effect would be to shorten the list of candidates available for consideration by the county commissioners from three to two, one, or even no names. If the commissioners are to exercise the discretion left to them under the 33rd and 52nd Amendments, it necessarily follows that the state's central committee must submit the names of three persons all of whom are qualified for appointment.

However, as noted earlier, a county commissioner who by virtue of his or her office will participate in the appointment process is not, as established in our previous opinions, qualified to take the appointment. Thus, if a state central committee were to submit the name of a county commissioner, it would be submitting the name of an unqualified person, much the same as if it submitted the name of a nonresident or a person not a qualified voter in the legislative district.

At this point it might be observed that, even though ineligible for appointment while still serving as

a county commissioner, a commissioner might choose to resign after the nomination and before the appointment, thus qualifying for the

[Orig. Op. Page 6]

position in their intervening period. The same of course could be said for a nominee not a resident of the district (who could offer to move to the district after nomination) or a nominee not registered to vote (who could offer to register after nomination). While any of these disqualified persons might remove their disqualifications after the nomination and before the appointment, yet again they might fail to do so. At the time the state central committee meets to make its nominations, the committee cannot with certainty predict whether a proposed candidate will be qualified for appointment when the county commissioners make the appointment.

We thus reach the opinion that the state central committee may submit as nominees for a vacant legislative position only candidates who are qualified for the position in question at the time of their nomination. County commissioners still in office at the time of nomination are not eligible, so a negative answer to your first question is dictated.

As noted earlier, a negative answer to your first question renders unnecessary any answer to your second question. However, we should note that neither our prior opinion nor this opinion precludes a commissioner from testing the waters by seeking to secure support for inclusion as a nominee prior to the final selection of the nominees. The eligibility of the commissioner is viewed from the point in time that the party central committee selects its three nominees.

We trust the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY

Attorney General

JAMES K. PHARRIS

Senior Assistant

Attorney General

Footnotes:

1. In each of the opinions we have written, including the present one, the county legislative

authority was a traditional board of commissioners. We recognize that several counties no longer have county commissioners but rather, by their county charters, have created other types of legislative bodies such as county councils. All of our opinions apply with equal force to county council members or other members of county legislative bodies as well as to those who are styled "county commissioners".

MEMORANDUM

TO: Washington State Association of Counties

FROM: Pacifica Law Group

DATE: January 25, 2019

SUBJECT: Eligibility of a Sitting County Commissioner or Councilmember for Appointment to a Vacant State Legislative Position

I. Question Presented and Short Answer

The Washington State Association of Counties has asked Pacifica Law Group to assess whether a sitting county commissioner or councilmember is eligible to be appointed to a vacant state legislative position where the appointment is made by the county commission or council on which he or she sits. As explained below, under the Washington Constitution and state law, a sitting county commissioner or councilmember should be eligible to be appointed to a vacant state legislative position. The Constitution sets forth the exclusive eligibility requirements and process for filling a legislative vacancy and does not preclude the appointment of a sitting commissioner or councilmember. Moreover, no statutory provisions prohibit such conduct. Though the Washington Attorney General concluded decades ago that a common law rule would bar such appointments, that conclusion predated Washington Supreme Court decisions confirming that constitutional eligibility requirements for state office are exclusive. In any case, Washington never adopted that common law principle, which has since fallen out of favor, and Washington's development of a comprehensive scheme governing legislative vacancies and the conduct of public officials confirms its decision to not be governed by the corresponding common law rule.

Any sitting county commissioner or councilmember who wishes to be considered for appointment should recuse him or herself from any vote and discussion about filling that legislative vacancy.

II. Discussion

A. The Washington Constitution establishes the exclusive eligibility and process requirements for filling a legislative vacancy.

The Washington Constitution empowers county legislative authorities to appoint replacements for vacant state legislative seats, subject to several specific requirements. Const. art. II, § 15. For vacancies in legislative districts located entirely within a single county, the person appointed must be (i) from the same legislative district, (ii) from the same political party as the prior legislator, and (iii) one of the three persons nominated by the county central committee of that party. *Id.* The same requirements apply for vacancies in legislative districts encompassing part or all of more than one county, except that the state central committee provides the nominations and the county legislative authorities from the associated counties decide the appointment. *Id.* In addition, article II, section 7 of the Washington Constitution establishes the qualifications for state legislative office: such persons must a citizen of the United States and a qualified voter in the district where he or she is selected. No provision of the Constitution prohibits a sitting county commissioner or councilmember from being eligible for appointment nor precludes county commissions or councils from appointing one of their own members.

Two Washington Supreme Court cases decided after the last Attorney General opinion on the subject confirm that the constitutional eligibility requirements and processes are binding and that no law, including the common law ethics principle cited by the Attorney General, can impose limitations on those requirements and processes. In *Gerberding v. Munro*, the Supreme Court struck down an initiative attempting to impose term limits on state legislative offices and certain state executive offices, holding that the Constitution establishes the exclusive qualifications for these offices and may not be added to by statute. 134 Wn.2d 188, 191, 949 P.2d 1366 (1998) (concluding that requirements prescribed in article II, section 7 express “the exclusive qualifications for” state legislative offices). Likewise, in *Parker v. Wyman*, the Supreme Court held that a residency requirement for superior court judges could not be added by statute to the constitutional requirements for that office. 176 Wn.2d 212, 223, 289 P.3d 628 (2012). Here, the Constitution sets forth the only eligibility requirements and process for filling legislative vacancies and does not preclude eligibility or appointment of a sitting commissioner or councilmember. Accordingly, such persons should be eligible for appointment to a legislative vacancy, and their commissions or councils should be able to appoint them.

B. Washington has adopted a comprehensive ethics scheme related to public officials that would not preclude eligibility or appointment.

Washington has enacted a comprehensive statutory scheme that governs the ethical conduct of, inter alia, county commissioners and councilmembers. *See, generally*, chapter 42 RCW. For example, these provisions (i) prohibit use of official positions to secure special privileges or exemptions, (ii) prohibit giving or receiving any form of compensation related to the official’s services, and (iii) prohibit certain acts that could lead to the disclosure of confidential

information acquired while an official. RCW 42.23.070. Washington law also addresses dual office-holding and prohibits it in several circumstances. *See, e.g.*, RCW 36.83.100 (prohibiting in certain cases county commissioner or councilmember that created road and bridge district from serving on district board). No provision of this comprehensive scheme prohibits a county commissioner or councilmember from eligibility for appointment to a legislative vacancy nor prohibits county commissions or councils from appointing one of their own members to a legislative vacancy. These ethical rules would require a sitting commissioner or councilmember to recuse him or herself during any discussion or vote on filling a legislative vacancy.

In addition, many counties and other municipalities have adopted their own ethics codes and policies to clarify the state statutory restrictions or to establish additional restrictions, including specifically to prohibit commissioners or councilmembers from simultaneously holding a state legislative position. *See, e.g.*, Pierce County Charter Sec. 9.45 (prohibiting councilmember from holding any other elected office except specific political party position); *see also* King County Code Sec. 3.04.030(B)(9) (prohibiting acts in conflict with official duties, including simultaneously holding two public offices that are incompatible)¹; Clallam County Code Sec. 3.01.030(2) (clarifying prohibition on gifting); Pierce County Code Sec. 3.12.030 (clarifying prohibition on misuse of public positions); Whatcom County Code Sec. 2.104.070(C) (prohibiting in certain situations former elected county official from representing another person before the county); Bainbridge Island Ethics Program Sec. II(F) (establishing nepotism prohibition).² Although many counties have exercised their considerable discretion and imposed additional ethics restrictions on county officials, none have barred a sitting commissioner or councilmember from eligibility for appointment to a legislative vacancy nor prohibited legislative authorities from appointing their own members to the state legislature. If a sitting commissioner or councilmember were appointed, that member would likely have to resign from the county commission or council upon being appointed.

C. Washington has not adopted a common law ethics principle.

The Attorney General opinions on the issue have relied on a common law ethics principle for the conclusion that a sitting commissioner or councilmember is not eligible for appointment to a legislative vacancy. Though some jurisdictions have adopted a common law rule that government entities may not appoint their own members to positions over which they have appointment power, no such common law principle has been adopted in Washington.

First, a common law rule must be recognized by a state for it to apply in that jurisdiction. *State ex rel. Clayton v. Bd. of Regents*, 635 So. 2d 937, 937-38 (Fla. 1994). Here, Washington has not adopted by statute or court case an applicable common law rule.

¹ It is unclear whether simultaneously holding a council or commission position and a state legislative position would violate the established common law doctrine prohibiting the holding of “incompatible public offices.” *Kennett v. Levine*, 50 Wn.2d 212, 216, 310 P.2d 244 (1957). Pierce County, for its part, has expressly barred such simultaneous holding.

² Any county commissioner or councilmember seeking appointment to a vacant legislative seat should consult the code and internal policies of the relevant counties to determine whether any additional requirements may apply.

Second, a state's development of laws governing an issue confirms a state's decision not to be governed by the corresponding common law. *Id. Clayton* is instructive on this point. In *Clayton*, the Florida Board of Regents appointed one of its members to the position of president of one of the universities. *Id.* The appointment was challenged as void "based on the common law rule that a government body with appointment powers may not appoint one of its own to a position." *Id.* at 938. The court denied the petition, holding that no common law rule prohibited such appointments. *Id.* The court noted that Florida's constitutional provisions governed public official conduct, including addressing dual office-holding, financial benefits from office-holding, abuse of public trust, open business, and public records. *Id.* These provisions, the court concluded, were "even more restrictive" than the common law doctrines adopted by other states. *Id.* Similarly, Washington has established a comprehensive scheme governing public official conduct, as examined above. In addition to those provisions, Washington has enacted several important open government requirements like those in *Clayton*, including that all meetings of county legislative authorities be open to the public, that public records be made available to the public, and that certain proceedings comply with the appearance of fairness doctrine. Chapter 42.30, .36, .56 RCW. Washington's decision comprehensively to address the conduct of its public officials and the appointment process confirms that the common law principle should not apply in Washington.

Third, the common law principle cited by the Attorney General in its earlier opinions has fallen out of favor in the intervening years and is now subject to limitation. As expressed in the recent edition of the primary treatise relied upon by the Attorney General: "[i]t is **sometimes** considered to be contrary to public policy to permit an officer having appointing power to use such power to confer an office on him- or herself in the absence of specific legislative authorization, or to permit an appointing body to appoint one of its own members." 63C Am. Jur. 2d Public Officers and Employees § 93 (footnotes omitted) (emphasis added).

III. Conclusion

A sitting county commissioner or councilmember should be eligible for appointment to a vacant state legislative position. The Constitution enumerates the exclusive eligibility requirements and process for filling a legislative vacancy and does not preclude the appointment of a sitting commissioner or councilmember. No statutory provision prohibits such appointment either. The Attorney General's earlier conclusion that a common law rule would bar such appointments is in retrospect mistaken. That conclusion predated Supreme Court decisions confirming that the constitutional eligibility requirements are exclusive. Moreover, Washington has not adopted that common law principle, which has since fallen out of favor, and Washington's development of robust laws governing appointments to the legislature and the conduct of public officials confirms the state's decision not to be governed by this common law ethics principle.



Skagit County Prosecuting Attorney Richard A. Weyrich

CRIMINAL DIVISION

CHIEF CRIMINAL DEPUTY
ROSEMARY KAHOLOKULA

SENIOR CRIMINAL DEPUTIES
TRISHA D. JOHNSON
EDWIN N. NORTON
PAUL W. NIELSEN

OFFICE ADMINISTRATOR
VICKIE MAURER

CRIMINAL DEPUTIES

HALEY SEBENS
MARY RYAN
BRANDEN PLATTER
RYAN BECKLEAN
JENNIFER FLYNN
ANDREW HEYDRICH

CIVIL DIVISION

CHIEF CIVIL DEPUTY
MELINDA B. MILLER

CIVIL DEPUTIES
ERIK PEDERSEN, SR. DPA
WILLIAM W. HONEA, SR. DPA
STEPHEN R. FALLQUIST, SR. DPA
JULIE NICOLL
KATRINA OUTLAND

FAMILY SUPPORT DIVISION

CHIEF DEPUTY
KURT E. HEFFERLINE

SENIOR DEPUTY
KAREN PINNELL

MEMORANDUM

TO: Skagit County Board of County Commissioners:
Lisa Janicki, Chair;
Ron Wesen, Commissioner; and
Kenneth A. Dahlstedt, Commissioner

FROM: Richard Weyrich, Skagit County Prosecuting Attorney; and
Melinda Miller, Skagit County Chief Civil Deputy Prosecutor 

DATE: January 29, 2019

RE: **County Commissioner or Councilmember Eligibility for Appointment to a Vacant State Legislative Position**

The Skagit County Prosecuting Attorney's Office has reviewed the relevant constitutional provisions, case law and attorney general opinions. The Skagit County Prosecuting Attorney's Office concurs in the legal opinion of Pacifica Law Group that a current County Commissioner or Councilmember is eligible for appointment to a vacant state legislative position.

Washington Supreme Court cases issued after AGO 1985 No. 1 and No. 15 have held that for state constitutional offices, the constitution sets forth the sole eligibility requirements. *Parker v. Wyman*, 176 Wn.2d 212, 218, 289 P.3d 628, 631 (2012) citing *Gerberding v. Munro*, 134 Wn.2d 188, 210, 949 P.2d 1366 (1998). The cases have expressed the strong presumption favoring eligibility for office:

Since the right to participate in the government is the common right of all, it is the unqualified right of any eligible person within the state to aspire to any of these offices, and equally the unqualified right of the people of the state to choose from among those aspiring the persons who shall hold such offices. It must follow from these considerations that eligibility to an office in the state is to be presumed rather than to be denied, and must further follow that any doubt as to the eligibility of any person to hold an office must be resolved against the doubt.

Main Office
605 S. Third Street
Mount Vernon WA 98273
(360) 416-1600
Fax: (360) 416-1648
prosecutor@co.skagit.wa.us

Civil Division
Administration Bldg., 700 S 2nd St, Rm 202
Mount Vernon WA 98273
(360) 416-1600
Fax: (360) 416-1649
prosecutor@co.skagit.wa.us

Family Support Division
PO Box 1226, 208 E Blackburn Rd Ste 203
Mount Vernon WA 98273
(360) 416-1161 fax (360) 416-1163

Gerberding v. Munro, 134 Wn.2d 188, 202, 949 P.2d 1366, 1373 (1998) (citing *State v. Schragg*, 158 Wash. 74, 78, 291 P. 321 (1930)). Washington Constitution Article 2, Section 7 provides:

No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

To require that a candidate not be a sitting Commissioner or Councilmember runs contrary to the rule that the constitution sets the exclusive requirements for eligibility and the strong presumption favoring eligibility.

Any issues that may arise due to incompatible offices would be resolved by a candidate's withdrawal from an incompatible office after appointment.

cc: Tim Holloran, Skagit County Administrator



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-126

File ID: AB2019-126 **Version:** 1 **Status:** Introduced
File Created: 02/01/2019 **Entered by:** MCaldwel@co.whatcom.wa.us
Department: Finance Division **File Type:** Resolution of the WCFCZDBS or Other Special District
First Assigned to: Council Finance and Administrative Services Committee
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Resolution amending the 2019 Flood Control Zone District and Subzones Budget, request no. 2, in the amount of \$90,659 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental No. 2 requests from the Flood Control Zone District Fund:

1. To appropriate \$90,659 in Natural Resources to fund Phase IV of the Lynden-Everson-Nooksack-Sumas groundwater model study.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED	Council Finance and Administrative Services Committee

Attachments: Resolution amend WCFZD 2019 Budget, #2.pdf

Final Action:
Enactment Date:
Enactment #:

RESOLUTION NO. _____

(A resolution of the Whatcom County Flood Control Zone District Board of Supervisors)

AMENDMENT NO. 2 OF THE 2019 BUDGET

WHEREAS, the 2019 budget for the Whatcom County Flood Control Zone District and Subzones was adopted November 20, 2018; and,

WHEREAS, changing circumstances require modifications to the approved 2019 budget; and,

WHEREAS, the modifications to the budget have been assembled here for deliberation by the Board of Supervisors,

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Flood Control Zone District Board of Supervisors that the 2019 budget as approved in Resolution 2018-044 is hereby amended by adding the following additional amounts to the budgets included therein:

	Expenditures	Revenues	Net Effect
Flood Control Zone District	<u>90,659</u>	<u>-</u>	<u>90,659</u>
Total Supplemental	<u>90,659</u>	<u>-</u>	<u>90,659</u>

ADOPTED this ____ day of _____, 2019

WHATCOM COUNTY FCZD
BOARD OF SUPERVISORS
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of Board of Supervisors

APPROVED AS TO FORM:

Civil Deputy Prosecutor

2019 Flood Control Zone District and Subzones Budgets Amendment #2		<u>Expenditures</u>	<u>Revenues</u>	<u>Fund Balance</u>
Flood Control Zone District Fund - Natural Resources	To fund phase IV of Lynden - Everson - Nooksack - Sumas groundwater model study.	<u>90,659</u>	<u>-</u>	<u>90,659</u>
Total Supplemental		<u>90,659</u>	<u>-</u>	<u>90,659</u>

Supplemental Budget Request

Status: Pending

Public Works

Natural Resources

Suppl ID # 2694

Fund 169

Cost Center 169121

Originator: Gary Stoyka

Year 1 2019

Add'l FTE

Priority 1

Name of Request: Phase IV Groundwater Model 2019 extension

X



1/24/19

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	6630	Professional Services	\$90,659
	Request Total		\$90,659

1a. Description of request:

This SBR will provide funding to complete Phase IV of the Lynden-Everson-Nooksack-Sumas (LENS) groundwater modeling study. Phase IV consists of the construction of the numerical computer model and is the final phase of this portion of the project. The LENS groundwater model will provide information that is vital to finding a solution to some of the County's water resources challenges including finding legal water for agriculture and in dealing with the use of exempt wells in the County. Phase IV of the project was anticipated to be completed by the end of 2018 and the 2018 budget included sufficient funds to complete the project. However, staff became aware in late 2018, after the 2019 budget was prepared, that the contractor needed more time to complete the scope of work. Consequently, their contract was extended to April 30, 2019 to complete the project. Typically, transferring funds from the 2018 budget year to the 2019 budget year could be accomplished with a continuing appropriation. However, this could not be done in this case as the original budget authorization for this project was made in 2017, and those funds were already continually appropriated to 2018 and cannot be continually appropriate a second time. Although a supplemental budget request is being made, there will be no impact on the fund balance since these are funds that were not spent in 2018, but will be spent in 2019.

1b. Primary customers:

Residents and businesses in Whatcom County particularly including the agricultural community and rural landowners, but also including cities, water districts and associates, local tribes, and habitat restoration advocates.

2. Problem to be solved:

The people of Whatcom County face an array of challenges related to water resources including finding legal sources of water for agriculture, water for cities and water districts for development, rural landowners, and finding enough water to support fish. Whatcom County elected officials have given direction to staff to support finding solutions to these water problems through cooperative engagement with other parties primarily including members of the WRIA 1 Watershed Management Board. The LENS groundwater model will provide insight on the interaction between groundwater and surface water over much of the ag and rural lands of Whatcom County which is information that is crucial to finding solutions to these water problems. The first three phases of the modeling project have been completed and were funded by the WRIA 1 Joint Board. The WRIA 1 Joint Board dissolved in 2016 and thus, is no longer able to fund Phase 4. Completion of the groundwater modeling project is a high priority for many water interests in the County. This SBR provides the remaining funding necessary to complete the groundwater modeling project as soon as possible.

3a. Options / Advantages:

The WRIA 1 Joint Board funded the first three phases of the project; but has since dissolved and Whatcom County has agreed to fund Phase IV. This SBR seeks the remaining \$90,659 from the Flood Fund in order to expedite the completion of the project.

Supplemental Budget Request

Status: Pending

Public Works

Natural Resources

Suppl ID # 2694

Fund 169

Cost Center 169121

Originator: Gary Stoyka

3b. Cost savings:

4a. Outcomes:

This project will provide information regarding the interaction of surface and groundwater in a large portion of the County facing water resources issues, which will aid in finding solutions to these problems. Phase IV is anticipated to be completed by April 30, 2019.

4b. Measures:

Completion of the model. Use of the model to aid in finding solutions to water resources problems.

5a. Other Departments/Agencies:

The County will be working closely with the City of Bellingham, Whatcom PUD, Lummi Nation, Nooksack Indian Tribe, Bertrand WID, and Department of Ecology on this project.

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

The other agencies will be advisory to the County and do not have a direct role in implementation of the model construction.

6. Funding Source:

Flood Control Zone District Fund Balance.

This \$90k expense was included in 2018 end of year fund balance projections used for budgeting. Therefore, carrying forward this unspent amount into 2019 will not impact fund balances as they were projected for the 2019 end of year.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-134

File ID:	AB2019-134	Version:	1	Status:	Agenda Ready
File Created:	02/11/2019	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Discussion		

First Assigned to: Council Public Works & Health Committee

Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	
---------------------	------------	------------------------	--	----------------------	--

TITLE FOR AGENDA ITEM:

Discussion regarding an ordinance granting Deer Creek Water Association a franchise and the right, privilege, and authority thereunder to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across and through the franchise area to allow for the provision of water services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way to allow for the provision of water services.

HISTORY OF LEGISLATIVE FILE

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

Attachments: Memo dated 12-27-18-DC, Ordinance-DC, Application for Franchise-DC

Final Action:
Enactment Date:
Enactment #:



MEMORANDUM

TO: The Honorable Jack Louws, County Executive,
Honorable Members of the Whatcom County Council

THROUGH: Jon Hutchings, Director *JH*

FROM: Andrew Hester, Public Works Real Estate Coordinator *AH*

RE: Franchise for Deer Creek Water Association

DATE: December 27, 2018

▪ **Requested Action**

Adopt an ordinance that grants a franchise to Deer Creek Water Association, allowing it to use and be present in County Rights of Way in order to provide water services per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

▪ **Background and Purpose**

Deer Creek Water Association has an existing franchise for its water lines and facilities within County rights of way. This proposed franchise will terminate and replace that existing agreement.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

SPONSORED BY: _____

PROPOSED BY: Executive

INTRODUCTION DATE: _____

ORDINANCE NO. _____

GRANTING DEER CREEK WATER ASSOCIATION A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO ALLOW FOR THE PROVISION OF WATER SERVICES.

WHEREAS, Deer Creek Water Association (hereinafter referred to as "Deer Creek Water"), has applied for a twenty-five (25) year franchise; and

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road, or public place;

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, Deer Creek Water has operated a system of water mains and water distribution lines and other facilities within a portion of Whatcom County under a previous fifty-year franchise ordinance, adopted by the County Council on May 31, 1978 and approved by the County Executive;

WHEREAS, Deer Creek Water seeks a non-exclusive twenty-five (25) year franchise to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain water transmission and distribution facilities upon, under, over, across and along certain roads and other areas in Whatcom County, Washington; and

WHEREAS, the application of Deer Creek Water has come on regularly to be heard by the County Council on the ___ day of _____, 2019, and notice of this hearing having been duly published on the ___ day of _____, 2019, and the ___ day of _____, 2019, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise for a period of twenty-five (25) years; and

WHEREAS, Whatcom County and Deer Creek Water intend that the previous franchises granted to Deer Creek Water that pertain to water lines for the provision of water services shall be terminated and be replaced by this Franchise;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the language set forth below, in Sections 1 through 20, shall constitute the franchise agreement between Whatcom County and Deer Creek Water, which shall be and become effective as set forth in Section 13 thereof:

Section 1. Definitions.

1.1 Where used in this franchise agreement ("Franchise"), the following terms shall mean:

1.1.1 "County" means the County of Whatcom, a political subdivision of the State of Washington, and its successors and assigns.

1.1.2 "Deer Creek Water" means Deer Creek Water Association, and its successors and assigns.

1.1.3 "Franchise Area" means all public county roads, county public ways, and county property now owned or hereafter dedicated to the County within the boundaries of Township 38 North, Range 2 East; Township 38 North, Range 3 East; Township 39 North, Range 2 East; and Township 39 North, Range 3 East in Whatcom County, Washington or as may hereafter be amended and attached hereto.

1.1.4 "Facilities" means, collectively, any and all water transmission and distribution systems, including but not limited to tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

1.1.6 "Right-of-Way": As used herein shall refer to the surface of and space along, above, and below any public street, road, way, lane, drive, alley or easement within the Franchise Area;

1.1.7 "Relocation": As used herein shall mean to protect, support, temporarily disconnect, relocate and/or remove Deer Creek Water facilities within or from within the County right-of-way.

Section 2. Facilities Within Franchise Area.

2.1 The County does hereby grant to Deer Creek Water a Franchise, and the right, privilege, and authority thereunder, to construct, operate, maintain, replace, and use all necessary equipment and facilities for a public water system, in, under, on, across, over, through, along, or below the public rights-of-way located in the Franchise Area.

2.2 This Franchise is subject to the terms and conditions hereinafter set forth.

Section 3. County Authority.

3.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the Franchise Area, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the Franchise Area.

Section 4. Noninterference of Facilities.

4.1 As to new Facilities, Deer Creek Water's Facilities shall be placed and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Prior to the installation of new Facilities within the Franchise Area, Deer Creek Water may request that the County determine whether the proposed placement of the Facilities will unreasonably interfere with the free and safe passage of traffic, and the County shall make such determination in writing within a reasonable period of time. If the proposed location is not approved by the County Engineer, the County Engineer shall advise in writing what reasonable modifications to the proposed location of the Facilities are necessary for the County Engineer to issue a determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic.

If Deer Creek Water proceeds to install new Facilities without first obtaining the County Engineer's determination that the proposed location of the Facilities will then unreasonably interfere with the free and safe passage of traffic then, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Deer Creek Water which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Deer Creek Water shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Deer Creek Water by such County codes and ordinances.

4.2 Deer Creek Water's existing Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Deer Creek Water which shall, at its own expense, act promptly to rectify the

problem in consultation with the County. Deer Creek Water shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Deer Creek Water by such County codes and ordinances.

4.3 All construction or installation of such Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owners of all utilities, public or private, installed in the Franchise Area prior in time to the Facilities of Deer Creek Water shall have preference as to the positioning and location of such utilities so installed with respect to Deer Creek Water. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Deer Creek Water shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Deer Creek Water's Facilities.

4.4 The locating, laying, construction, operation and maintenance of Deer Creek Water's Facilities authorized by this Franchise shall not preclude the County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to Deer Creek Water's Facilities, provided that Deer Creek Water and the County shall first check with the locator service to determine whether or not any of Deer Creek Water's lines are located in the proposed work area. Upon finding from the locator service that Deer Creek Water does have lines located within the proposed work area, the County shall provide Deer Creek Water with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Deer Creek Water may protect its Facilities. Failure of Deer Creek Water to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Deer Creek Water the otherwise-required advance notice of proposed work.

4.5 Deer Creek Water shall maintain all above-ground Facilities that it places in the Franchise Area. In order to avoid interference with the County's ability to maintain the Franchise Area, Deer Creek Water shall provide a clear zone of five (5) feet on all sides of such above-ground Facilities. If Deer Creek Water fails to comply with this provision, and by its failure, property is damaged, then Deer Creek Water shall be deemed responsible for all damages caused thereby and the County shall be released from any responsibility therefore. For these purposes, "clear zone" means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations.

Section 5. Construction Within the Franchise Area.

5.1 All construction and installation work within the Franchise Area shall be subject to the approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state and federal standards, codes or regulations, and the County expressly reserves the right to prescribe standards as to how and where Facilities shall be installed. The standards

shall be consistent with reasonable standards and standard engineering practices in the applicable industries.

5.2 Prior to commencement of construction of any new Facilities, Deer Creek Water shall first file with the County Engineer its application for permits to do such work, together with plans and specifications in duplicate showing the position and location of all such Facilities sought to be constructed, laid, installed or erected at that time showing their position relative to existing County roads, rights-of-way, or other County property within the Franchise Area upon plans drawn to scale. The Facilities shall be laid in conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without Deer Creek Water first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Deer Creek Water. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Deer Creek Water shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

5.3 In any work which requires breaking of soil within the Franchise Area for the purpose of laying, relaying, connecting, disconnecting, constructing, maintaining and repairing Deer Creek Water's Facilities, and making connections between the same to structures and buildings of consumers or making connections to other Facilities now in existence or hereafter constructed, Deer Creek Water shall be governed by and conform to the general rules adopted by the County Engineer; and Deer Creek Water at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the Franchise Area and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the soil within the Franchise Area shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications for the restoration of the Franchise Area to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the County Engineer may require a performance bond in a reasonable sum sufficient to guarantee that such Franchise Area shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. Deer Creek Water shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County Engineer may at any time do, order, or have done, any and all work that the County Engineer considers necessary to restore to a safe condition any Franchise Area left by Deer Creek Water or its agents in a condition dangerous to life or property, and Deer Creek Water upon demand shall pay to the County all costs of such work, the County having first provided notice of such condition to Deer Creek Water and a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused by Deer Creek Water that necessitates immediate repair by the County or its agents on an emergency basis where notice to Deer Creek Water or providing an opportunity to cure is not feasible considering nature of the emergency and necessary repair, as determined by the County Engineer using professional engineering standards, no such notice and reasonable time to cure shall be required as a condition of repayment by Deer Creek Water.

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Deer Creek Water shall reasonably conform to the standards and specifications established by the County Engineer. Deer Creek Water shall consult with the County Engineer in case it plans to deviate from the established standards and specifications in the course of installing Facilities within the Franchise Area and must demonstrate to the satisfaction of the County Engineer that its plans will achieve a legal and functionally equivalent result.

5.5 All work done by and for Deer Creek Water under this Franchise shall be done in a thorough and workmanlike manner. In the construction of Facilities and the opening of trenches within and the tunneling under the Franchise Area, Deer Creek Water shall leave such trenches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches, or tunnels are left open at night, Deer Creek Water shall place warning lights and barricades at such a position as to give adequate warning of such work, per the MUTCD (Manual on Uniform Traffic Control Devices). Deer Creek Water shall be liable for any injury to person or persons or damage to property to the extent proximately caused by its carelessness or neglect, or to the extent proximately caused by any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by Deer Creek Water.

5.6 Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, Deer Creek Water shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Deer Creek Water's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Deer Creek Water. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

Section 6. Relocation of Facilities.

6.1 Deer Creek Water shall, at its sole expense and with due diligence, relocate or adjust the elevation of any of its Facilities upon receipt of written request from the County Engineer when determined reasonably necessary based upon sound engineering principles by the County Engineer for improvement to the County facilities in the Franchise Area, provided that the elevations required by the County are not in violation of local, state or federal law and are reasonable necessary for safety purposes. Deer Creek Water shall coordinate such relocation or adjustment of its Facilities with the County and shall perform the same in a timely fashion so that, absent conditions beyond the control of Deer Creek Water, such relocation or adjustment of Deer Creek Water's Facilities will not impede or delay pending changes to the Franchise Area.

6.2 Deer Creek Water may propose to the County alternatives to reduce or eliminate the need for relocation of its Facilities pursuant to Section 6.1. Upon the County's receipt from Deer Creek Water of such alternatives in writing, the County shall evaluate such alternatives and shall advise Deer Creek Water in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Deer Creek Water's

Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Deer Creek Water full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the County reasonably determines that such alternatives are not appropriate, Deer Creek Water shall relocate its Facilities as otherwise provided in Section 6.1. Any acceptance by the County of such alternatives shall not excuse (nor shall be construed to excuse) Deer Creek Water from future relocation or adjustment of Deer Creek Water's Facilities pursuant to this Section 6.

6.3 As qualified in Sections 6.1 and 6.2 above, and in Section 6.4 below, whenever any person or entity, other than the County, requires the relocation of Deer Creek Water's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Deer Creek Water's Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Deer Creek Water shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Deer Creek Water, at a time and upon terms acceptable to Deer Creek Water, which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Deer Creek Water in the relocation of Deer Creek Water's Facilities; and

6.3.2 Indemnify and save Deer Creek Water harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Deer Creek Water's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Deer Creek Water's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Deer Creek Water's Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Deer Creek Water or the County (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Deer Creek Water's Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Deer Creek Water in writing that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the grading or widening of the Franchise Area on the County's behalf consistent with the County's Six-Year Road Construction Program, then Deer Creek Water shall relocate its Facilities within the Franchise Area in accordance with Section 6.1.

6.4.2 If the County notifies Deer Creek Water in writing that the County will bear a portion of the costs of, or will provide funding towards, a project that includes grading or widening of the Franchise Area resulting from the imposition of such condition or requirement upon such person or entity, then Deer Creek Water agrees to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne by Deer Creek Water being a percentage equal to that percentage of such project's costs borne or funded by the County (the "County Contribution"); provided, however, in no event shall such portion borne by Deer Creek Water exceed the dollar amount of such County Contribution. "Project" shall mean that work directly bearing on the area that necessitates relocation by Deer Creek Water, and shall not include other off-site improvements that may be performed at the

same time. In all other respects such relocation shall be a required relocation for the purposes of Section 6.3 and without limiting the foregoing, Deer Creek Water shall have the right as a condition of such relocation to require such person or entity to pay to Deer Creek Water all relocation costs and expenses in excess of the portion borne by Deer Creek Water under this Section 6.4.2.

6.4.3 If the Facilities to be relocated pursuant to this subsection 6.4 have been located at or relocated within the preceding five (5) years to a location upon which the County had agreed at the time without reservation, then Deer Creek Water shall be entitled to recovery of all its costs and expenses incurred in the relocation of its Facilities from the party on whom the condition for road improvements was placed. Documentation of any such agreement between the County and Deer Creek Water shall be kept in conjunction with the encroachment permit issued by the County for the work of relocation.

6.5 Nothing in this Section 6 shall require Deer Creek Water to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from or addressed by this Franchise.

Section 7. Indemnification.

7.1 To the extent permitted by law, Deer Creek Water shall defend, indemnify and hold the County harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney's fees, made against it on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the actions or failure to act of Deer Creek Water, its agents, servants or employees in exercising the rights granted to Deer Creek Water in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Deer Creek Water thereof, and Deer Creek Water shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Deer Creek Water thereof, and Deer Creek Water shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Deer Creek Water and the County, Deer Creek Water and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Deer Creek Water shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Deer Creek Water's failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

7.2 Acceptance by the County of any work performed by Deer Creek Water at the time of completion shall not be grounds for avoidance of the covenant in Section 7.1 above.

Section 8. Acquisition of Right-of-Way.

8.1 In the event that Deer Creek Water proposes to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Deer Creek Water shall notify the County of the same and the County shall have the option, with the concurrence of Deer Creek Water, to acquire in place of such Deer Creek Water proposed easements, additional public rights-of-way or equivalent public utility easements for use by Deer Creek Water. Any such public rights-of-way acquired by the County shall become Franchise Area. Any such public utility easements so acquired by the County shall not be Franchise Area (and shall not be subject to the terms and conditions of this Franchise) and Deer Creek Water's use of such public utility easements shall be subject to the terms and conditions of such public utility easements. Provided the above section does not apply to Deer Creek Water's customer service lines and only to easements related to new transmission water pipelines.¹

Section 9. Vacation of the Franchise Area.

9.1 If at any time the County shall seek to vacate any portion of the Franchise Area and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area for the use of the County, in either its proprietary or governmental capacity, and there are no Facilities located in the Franchise Area, then the County Engineer may at his option and by giving thirty (30) days written notice to Deer Creek Water, terminate this franchise with reference to such portion of the Franchise Area so vacated, and the County shall not be liable for any damages or loss to Deer Creek Water allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Deer Creek Water from exercising its powers of eminent domain. Should Deer Creek Water notify the County of its intent to consider exercising its power of eminent domain to obtain an easement for the Facilities located within the area of the Franchise to be terminated, the termination of the Franchise shall be tolled for a period of no less than one hundred and twenty (120) days from the date of notice.

9.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Deer Creek Water, reserve an easement to Deer Creek Water for Deer Creek Water's Facilities as reasonably necessary for the continued use, operation, maintenance and repair of the Facilities as located in the portion of the Franchise Area to be vacated.

Section 10. Moving Buildings within the Franchise Area.

10.1 If any person or entity obtains permission from the County to use the Franchise Area for the moving or removal of any building or other object, the County shall, prior to granting such permission, direct such person or entity to arrange with Deer Creek Water for the temporary adjustment of Deer Creek Water's Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such

¹ A distinction is drawn here between public rights-of-way which are or shall become Franchise Area and thus governed by the terms of the franchise ordinance, and public utility easements which shall not become Franchise Area, the use of which shall be governed by the terms and conditions of the easements themselves and not by the franchise ordinance.

arrangements, upon terms and conditions acceptable to Deer Creek Water, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Deer Creek Water shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

Section 11. Locating Facilities.

11.1 Deer Creek Water and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

Section 12. Nonexclusive Franchise.

12.1 This Franchise is not and shall not be deemed to be an exclusive franchise. It shall not in any manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any part of the Franchise Area, and shall in no way prevent or prohibit the County from constructing, altering, maintaining, using, or vacating any part thereof, or affect its jurisdiction over any part thereof with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

Section 13. Franchise Term; Effect on Existing Franchises for Same Purpose.

13.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Deer Creek Water shall have no rights under this Franchise nor shall Deer Creek Water be bound by the terms and conditions of this Franchise unless Deer Creek Water shall, within thirty (30) days after the effective date of the Ordinance, file with the County its written acceptance of the franchise agreement contained within the Ordinance.

13.1.1 No franchise hereunder shall become effective for any purpose unless and until written acceptance therefore shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in the form and substance as shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, and in such franchise; and

13.1.2 Such written acceptance shall be filed by Deer Creek Water not later than the thirtieth (30th) day following the effective date of the Ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Deer Creek Water shall be deemed to have rejected the same. In case of Deer Creek Water's tardy acceptance of franchise, the County's recognition thereof shall be strictly at its discretion.

13.2 The existing franchise between the Parties pertaining to the same subject matter, i.e., Deer Creek Water's Facilities, which was granted by the County and accepted by Deer Creek Water on May 31, 1978, shall be superseded and replaced by this franchise upon the effective date of this franchise as provided above.

13.3 This Franchise agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Franchise agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

Section 14. Assignment.

14.1 Neither this Franchise nor any interest herein shall be sold, transferred, or assigned without the prior consent in writing of the County Council, which consent shall not be unreasonably withheld, except that the Deer Creek Water may mortgage this Franchise to the trustee for its bond holders. Any approved assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the County, together with its written acceptance of all terms and conditions of this Franchise.

14.2 All the provisions, conditions, and requirements herein contained shall be binding upon the successors and assigns of Deer Creek Water, and all privileges, as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Deer Creek Water is mentioned.

Section 15. Amendment.

15.1 Except as addressed in and through Section 15.3 below, this Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the County in conjunction with the exercise (or failure to exercise) by Deer Creek Water any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.1.1 References this Franchise; and

15.1.2 States that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

15.2 If, during the term of this Franchise, there becomes effective any change in federal or state law (including changes approved by the Washington Utilities and Transportation Commission) which:

15.2.1 Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

15.2.2 Pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith; then, in such event, either party may notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiation on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the County and acceptance of such Ordinance by Deer Creek Water, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

15.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter, Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto.

Section 16. Miscellaneous

16.1 If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

16.2 This Franchise is subject to the requirements of any and all applicable laws, rules, and regulations, including the Whatcom County Code, as currently enacted or hereafter modified. In the event of any actual conflict between the provisions of this Franchise and the requirements of the Whatcom County Code or County-enacted rules or regulations, the provisions of this Franchise shall control, to the extent authorized by law.

16.3 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

For County: County Executive
Whatcom County Courthouse.
311 Grand Ave.
Bellingham, WA 98225

For Deer Creek Water: Business Manager
Deer Creek Water Association
PO Box 30230
Bellingham, WA 98228

or to such other address as the foregoing parties hereto may from time-to-time designate in

writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

16.4 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

Section 17. Incorporation and Annexation.

17.1 Whenever any part of the Franchise Area, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all of the Franchise Area not so included in city or town limits.

Section 18. Insurance.

18.1 During the term of this Franchise Deer Creek Water shall keep in effect, a liability insurance policy covering all liability of Deer Creek Water to the County, including any assumed by contract between Deer Creek Water and any other party, with limits at least in the amount of \$1,000,000. In lieu of the insurance requirement of this Section, Deer Creek Water may self-insure against such risks. At the time of Deer Creek Water's acceptance of this Franchise and otherwise upon the County's request, Deer Creek Water shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

Section 19. Forfeiture and Termination of Franchise.

19.1 If Deer Creek Water shall willfully violate or fail, through willful or unreasonable neglect, to comply with any of the provisions of this Franchise for sixty (60) days after receipt of written notice from the County, then the County shall have the right by ordinance to declare Deer Creek Water's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter; provided, however, if any failure to comply with this Franchise by Deer Creek Water cannot be corrected with due diligence within said sixty (60) day period (Deer Creek Water's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Deer Creek Water may so comply shall be extended for such time as may be reasonably necessary and so long as Deer Creek Water commences promptly and diligently to effect such compliance.

Section 20. Effective Date.

20.1 This Ordinance shall be effective ten (10) days after being signed by the County Executive, with the Franchise granted hereunder finally effective pursuant to the terms of Sections 13.1, 13.1.1, and 13.1.2, having been: (i) introduced to the County Council not less than thirteen (13) days before its passage; (ii) brought to public notice by such notice having

been posted in three (3) public places in Bellingham at least fifteen (15) days before the day fixed for the public hearing; (iii) published at least twice in the official newspaper for the County and no later than five (5) days prior to the day fixed for the hearing and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the County of Whatcom by a vote of at least _____ members of the County Council on _____, 2019.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

() Approved () Denied



Civil Deputy Prosecutor

Jack Louws, County Executive

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

COMES NOW, Deer Creek Water Association

who respectfully petitions the Whatcom County Council for a twenty-five (25) year franchise to lay, construct, maintain, and repair

water mains

and all necessary appurtenances along, over, and across the following roads situated in Whatcom County, Washington:

all roads and rights-of-way within or adjacent to our DOH and Whatcom Co. approved Service Area, as now or in the future, configured.

The petitioner further requests that the Whatcom County Council fix a time and place for a public hearing on the granting of this continuation of franchise, and that public notice be given, at the expense of the petitioner, as provided by law; and that, at said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 29 Dec 2016

Deer Creek Water Association

Company Name

PO Box 30230

Mailing Address

Bellingham WA 98226

City State Zip

360.820.4314

Phone Number

Douglas Wittinger

Signature of authorized agent/owner

Douglas Wittinger

Print or type name

Its Business Manager

Deer Creek Water Association - (18418-E) Member Parcels and Service Area - February 2012

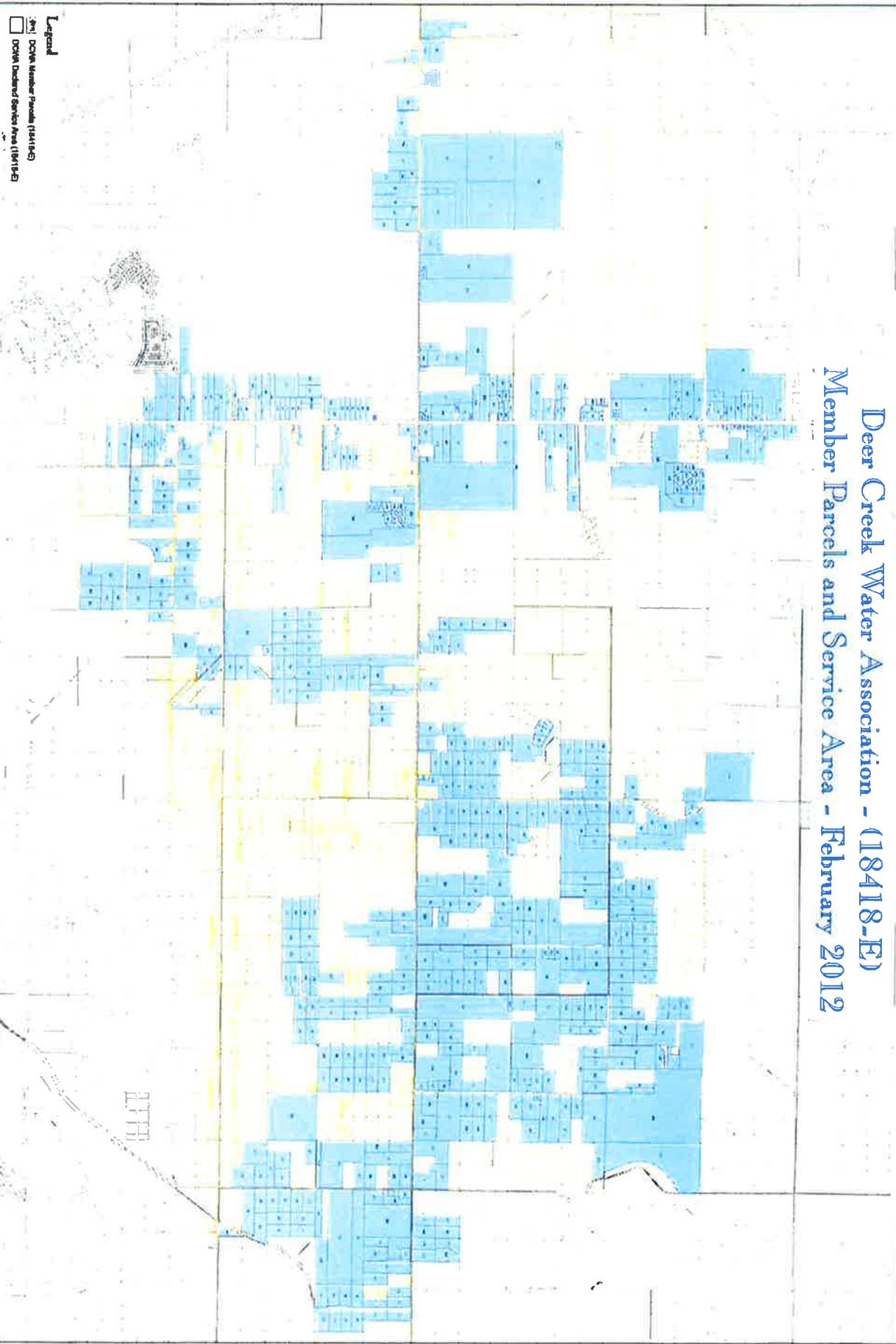
- Legend**
- Deer Member Parcel (18418-E)
 - DCWA District Service Area (18418-E)

1st Edition

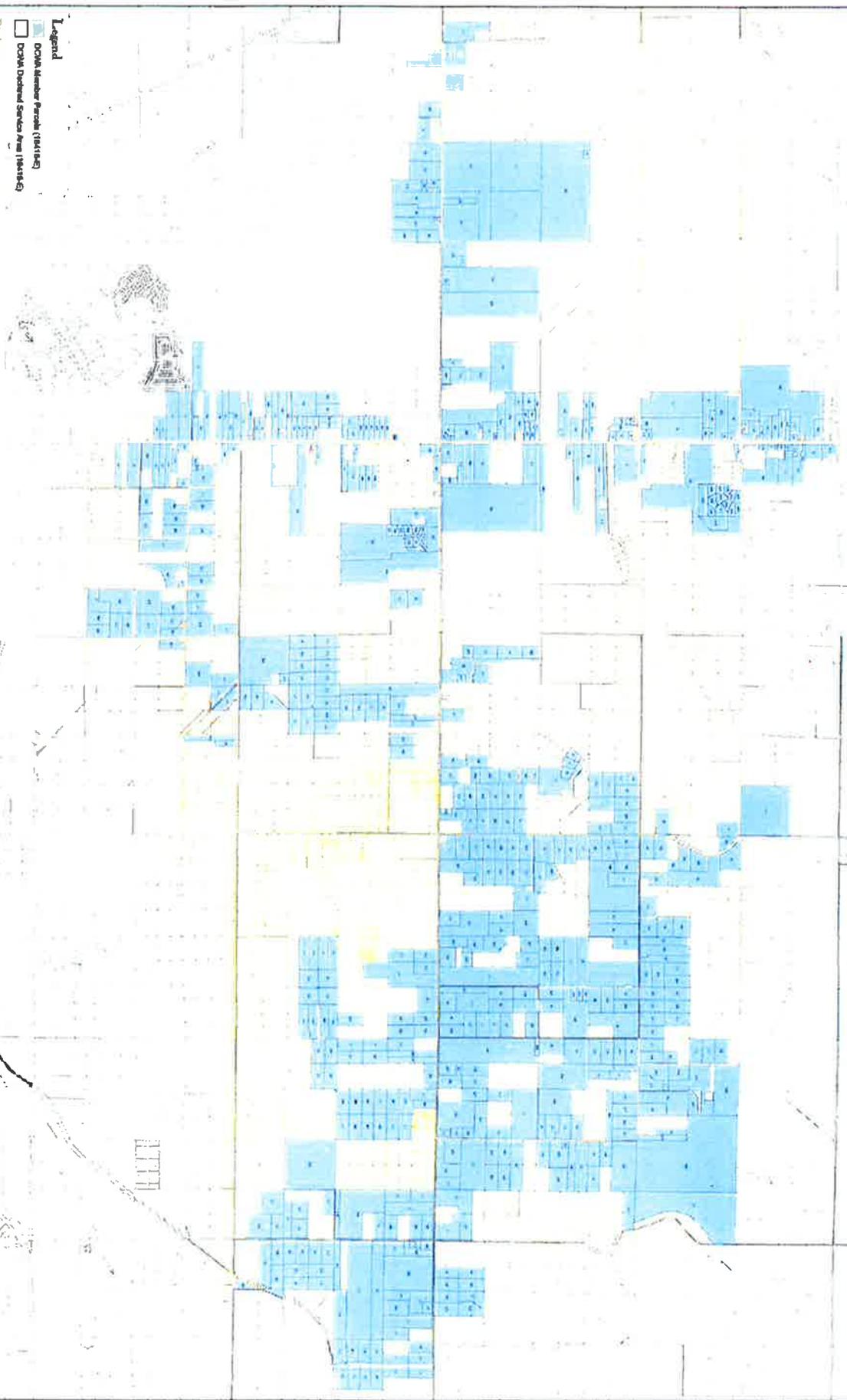
This map was created by the DCWA and is intended to provide a general overview of the service area. It is not intended to be used for legal purposes. The DCWA is not responsible for any errors or omissions on this map. The DCWA is not responsible for any damages that may result from the use of this map. The DCWA is not responsible for any damages that may result from the use of this map.



Coordinate System: NAD 83 StatePlane Washington North FIPS 4901
Projection: Lambert Conformal Conic
False Easting: 1,600,000
False Northing: 8,000
Standard Parallel 1: 47.000
Standard Parallel 2: 49.7333
Latitude of Origin: 47.0000
Units: Feet US



Deer Creek Water Association - (18418-E) Member Parcels and Service Area - February 2012



Legend
■ DCWA Member Parcel (1/15/12)
 DCWA District Service Area (1/15/12)

Disclaimer

This map was created by Global Mapping and Survey Associates Inc. on January 25, 2012. The publisher warrants that the information contained herein is true to the best of our knowledge and belief. The user assumes all responsibility for the use and accuracy of the information. Global Mapping and Survey Associates Inc. is not responsible for any errors or omissions. The user assumes all responsibility for the use and accuracy of the information. Global Mapping and Survey Associates Inc. is not responsible for any errors or omissions.

Map Scale
 0 1,150 2,300 4,600 6,900 9,200 Feet
 0 410 820 1,640 2,460 3,280 Meters

Geographic System: NAD 83
 Datum: North American 1983
 Projection: Lambert Conformal Conic
 False Northing: 0.0000
 Central Meridian: -115.0000
 Standard Parallel 1: 44.7119
 Standard Parallel 2: 47.2000
 Scale Factor: 0.9998





Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-043

File ID: AB2019-043 **Version:** 1 **Status:** Agenda Ready
File Created: 01/07/2019 **Entered by:** DBrown@co.whatcom.wa.us
Department: County Council Office **File Type:** Discussion
First Assigned to: Council Criminal Justice and Public Safety Committee
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Discussion of proposed ordinance repealing and replacing Whatcom County Code 1.28, Standards for Correctional Facilities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

With the enactment of Ordinance No. 87-85, the County adopted facility standards for the Whatcom County Jail. This ordinance was eventually codified under Chapter 1.28 of the Whatcom County Code, Standards for Correctional Facilities. These standards were originally adopted to comply with RCW 70.48.071, a new state law requiring Counties to adopt standards for correctional facilities. At that time, Whatcom County elected to adopt existing state standards and, over time, those standards have changed, become outdated and/or have been repealed. The County is currently operating under WCC 1.28, a code with outdated standards that expose the County to the risk of civil liability. As a result, the Prosecutor Attorney's Office has recommended that the Sheriff request the County Council to adopt an ordinance repealing the current provisions in Chapter 1.28 of the Whatcom County Code in their entirety, and replacing it with the provisions in Exhibit "A."

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
01/15/2019	Council Criminal Justice and Public Safety Committee	HELD IN COMMITTEE	Council Criminal Justice and Public Safety Committee

Attachments: Staff Memo, Proposed Ordinance for Action January 15, 2019, Proposed Language to Repeal, WCC 1.28, Standards for Correctional Facilities

Final Action:
Enactment Date:
Enactment #:

WHATCOM COUNTY
SHERIFF'S OFFICE
BILL ELFO
SHERIFF



PUBLIC SAFETY BUILDING
311 Grand Avenue
Bellingham, WA 98225-4038
(360) 778-6600

MEMORANDUM

RECEIVED

NOV 21 2018

JACK LOUWS
COUNTY EXECUTIVE

TO: County Executive
County Council

FROM: Bill Elfo, Sheriff

A handwritten signature in black ink, appearing to read "Bill Elfo".

DATE: November 21, 2018

SUBJECT: Request to Repeal and Replace Whatcom County Ordinance Chapter 1.28 "STANDARDS FOR CORRECTIONAL FACILITIES"

I am writing to you today to provide some explanation regarding an ordinance repeal request submitted to you via the County Executive, and in consultation with the Whatcom County Prosecutor's Office. The reason for the proposed ordinance repeal and replace action is that the current Chapter 1.28 of the Whatcom County Code (WCC) is obsolete, inconsistent with best practices and ineffective. The current ordinance should be replaced in its entirety, and replacing it with the provisions contained in Exhibit A, attached hereto. Day to day procedures and operations and the standards for those operations and procedures should reside in the written regulations, policies and procedures of the Sheriff's Office. Otherwise it is too cumbersome to revise, update and manage those critical policies as practices change and case law evolves. This would exclude, however the facility standards that are contained in the applicable building codes.

You may question as to why we are now requesting to repeal and replace a long-outdated section of the Code. Previously the legal advice we had received was that there is a provision in the code that allows the standards to be suspended during times of over-crowding. Since the main jail has had a long, ongoing status of being overcrowded, the standards were considered to be suspended. With the recent strategy of population draw down, new jail use agreements, and contracting with outside correctional facility for placement of Whatcom County and local City inmates, we have stabilized the population to an acceptable level and the argument that overcrowding suspends the obsolete code no longer suffices. Legal analysis has confirmed this and we concurred with the Prosecuting Attorney's Office that work should commence to review our body of policy and standards (outside of the code) to assure that existing policies, guidelines, procedures and requirements sufficiently exist. We prepared a spreadsheet to cross reference all the code sections and requirements with current sections of our various policies to assure that all applicable areas are covered by a policy or other written standards.

History of the County Code, Chapter 1.28 Upon enactment of Ordinance No. 87-85, the County Council adopted facility standards for the Whatcom County Jail in 1987. This ordinance was eventually codified as chapter 1.28 WCC, *Standards for Correctional Facilities*. This was done to comply with RCW 70.48.071, a then new state law requiring Counties to adopt standards for correctional facilities. At that time, Whatcom County elected to adopt existing state standards. These standards expired in 2006 along with the elimination of the State Jail Commission.

Over the course of thirty years, new legislation and case law has invalidated many of the standards contained in our existing code. WCC 1.28 is no longer compliant with the law. To avoid significant exposure to civil liability, the County should repeal WCC 1.28 and bring the County into compliance with current law.

Some examples of serious problems with WCC 1.28:

1) WCC 1.28 contains outdated standards:

In 1987, WCC 1.28 reflected the most recent standards, laws and best practices. Over time, these standards were changed, amended and/or repealed. For example, the old standards provide for “choke holds” as a method of restraint. Today, this practice is no longer an acceptable form of restraint. New standards, not provided for in our code, include regulating the types of restraints used on pregnant women and those used in strip searches, the prevention of prison rape, the required level of medical care to be provided to offenders, and the evolution of electronics. WCC 1.28 was adopted in 1987, has never been amended, and is now outdated and no longer compliant with new legislation or modern standards we use today.

2) WCC 1.28 is too narrowly written:

WCC 1.28 is narrowly written to address specific contexts and does not provide any flexibility for change. The standards for correctional facilities are continuously changing and our code fails to reflect the standards set by new legislation, case law or national standards for best practices as they currently exist. WCC 1.28 must be repealed as the standards are narrowly written and cannot be changed without rewriting the entire code.

3) WCC 1.28 conflicts with standards/laws:

WCC 1.28.030 provides “physical plant standards” that conflict with existing building codes and national standards developed by the American Corrections Association for correctional facilities. For example, the old standards provide for the type of wall finishing and the type of sink and faucet required to be used in a corrections facility infirmary, along with the number of foot-candles for lighting in each housing unit. These standards conflict with current building and safety codes and are in violation of federal, state and national safety standards.

Current Practice in other WA Counties: An electronic search of county codes related to correctional facilities within Washington State produced the following information:

- A majority of counties (27) in Washington do not have code provisions governing their correctional facilities. The counties that have codes adopted their own standards, the state standards, or have referenced the policy and procedure manuals they have utilized in developing their own standards for correctional facilities.
- The counties that adopted the state standards have either rewritten their entire code, repealed their code, or their code remains outdated and unchanged like ours.

Proposed alternative to current code language: Replace the current code sections and language with the following simplified sections specifying the responsibility to maintain current operational standards, rules, policies and procedures to conform with legal requirements.

ORDINANCE NO. _____

REPEAL WHATCOM COUNTY CODE 1.28 IN ITS ENTIRETY

WHEREAS, in 1987, Chapter 70.48 RCW, the City and County Jails Act, was adopted; and

WHEREAS, RCW 70.48.071 specifically provided that "...local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988..." and

WHEREAS, the state jail commission standards were adopted for correctional facilities in Title 289 WAC, *Corrections Standards Board*;

WHEREAS, to comply with RCW 70.48.071, the Whatcom County Council adopted the same state standards contained in Title 289 WAC in their entirety through its enactment of Ordinance No. 87-85, and this ordinance was ultimately codified in chapter 1.28 of the Whatcom County Code (WCC), *Standards for Correctional Facilities*; and

WHEREAS, in 2006 all sections of Title 289 WAC were repealed and decodified as they were outdated; and

WHEREAS, Whatcom County's identical standards are similarly outdated; and

WHEREAS, the Whatcom County Sheriff's Office is unable to comply with the standards and requirements under WCC 1.28 as codified, thus exposing Whatcom County to potential civil liability; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

WHEREAS, the Whatcom County Sheriff's Office requests the repeal of the current provisions in WCC 1.28 in their entirety, and replacing them with the provisions in Exhibit A, attached hereto.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the current WCC 1.28 be repealed and replaced with the language in Exhibit A.

ADOPTED this ____ day of November, 2018.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

(Rud Browne), Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Royce Buckingham
Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

Exhibit "A"

Chapter 1.28

STANDARDS FOR CORRECTIONAL FACILITIES

1.28.010 General

A. The rules in this chapter shall apply to "Adult Correctional Facilities" within Whatcom County. "Adult Correctional Facilities" shall be defined as facilities used for housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction and rehabilitation following conviction of a criminal offense, and/or facilities used for housing adult persons being held while awaiting adjudication of a criminal offense.

B. When the word "shall" is used in this chapter, it is used as an imperative and must be considered mandatory. When the term "may" is used in this chapter, it is used as directory only and is not mandatory but rather permissive.

1.28.11 Operational standards

A. The Whatcom County Sheriff shall have the express authority to adopt any and all operational standards, rules, and procedures for the Whatcom County Sheriff's Office Corrections Bureau as needed. The Sheriff may adopt, revise, implement and/or update these standards at any time and as needed to conform with federal, state, and local laws and regulations.

B. These standards are collectively established within the *Sheriff's Office General Policies*, the *Sheriff's Office Corrections Bureau Operational Policies and Procedures*, and the *Medical Policies and Procedures* of the Jail Health Program. All operational standards and any amendments thereafter shall be retained by the Whatcom County Sheriff's Office.

C. All operational standards related to the physical plant, regulated by the International Building Code and/or federal, state or local laws, shall be maintained and enforced by County Administrative Services.

LANGUAGE TO BE REPEALED

Chapter 1.28
STANDARDS FOR CORRECTIONAL FACILITIES

Sections:

- ~~1.28.010 — General.~~
- ~~1.28.020 — Definitions.~~
- ~~1.28.030 — Physical plant standards.~~
- ~~1.28.040 — General administration.~~
- ~~1.28.050 — Staff positions.~~
- ~~1.28.060 — Training.~~
- ~~1.28.070 — Records.~~
- ~~1.28.080 — Emergency procedures.~~
- ~~1.28.090 — Fire prevention — Suppression.~~
- ~~1.28.100 — Overcrowding.~~
- ~~1.28.110 — Use of force.~~
- ~~1.28.120 — Admissions.~~
- ~~1.28.130 — Preclassification.~~
- ~~1.28.140 — Orientation.~~
- ~~1.28.150 — Classification — Segregation.~~
- ~~1.28.160 — Good time.~~
- ~~1.28.170 — Release and transfer.~~
- ~~1.28.180 — Transportation.~~
- ~~1.28.190 — Staffing.~~
- ~~1.28.200 — Supervision — Surveillance.~~
- ~~1.28.210 — Critical articles.~~
- ~~1.28.220 — Prisoner rights.~~
- ~~1.28.230 — Discipline.~~
- ~~1.28.240 — Grievance procedure.~~
- ~~1.28.250 — Responsible physician and licensed staff.~~
- ~~1.28.260 — Health care policy and procedures.~~
- ~~1.28.270 — Health screening.~~
- ~~1.28.280 — Access to health care.~~
- ~~1.28.290 — Health care training.~~
- ~~1.28.300 — Medications control.~~
- ~~1.28.310 — Health care records.~~
- ~~1.28.320 — Special medical issues.~~
- ~~1.28.330 — Access to facilities.~~
- ~~1.28.340 — Food.~~
- ~~1.28.350 — Clothing — Bedding — Personal items.~~
- ~~1.28.360 — Sanitation.~~
- ~~1.28.370 — Services.~~
- ~~1.28.380 — Programs.~~
- ~~1.28.390 — Telephone usage.~~
- ~~1.28.400 — Mail.~~
- ~~1.28.410 — Visitation.~~
- ~~1.28.420 — Severability.~~

1.28.010 ~~General.~~

A. The rules set forth in this chapter shall apply to correctional facilities generally within Whatcom County, but shall not apply to holding facilities, detention facilities, work release facilities or juvenile facilities unless they are specifically mentioned in the provisions set forth in this chapter.

LANGUAGE TO BE REPEALED

~~B. When the word "shall" is used in this chapter it is used as an imperative and must be considered mandatory; whereas when the term "may" is used in this chapter it is used as directory only and is not mandatory but rather permissive. (Ord. 87-85 (part)).~~

~~1.28.020 Definitions.~~

~~The following words and phrases shall have the meaning indicated whenever used in this chapter unless a different meaning is specifically indicated:~~

~~A. "Correctional facility" means a facility operated by a governing unit primarily designed, staffed and used for housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction and rehabilitation following conviction of a criminal offense.~~

~~B. "Detention facility" means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing of persons serving terms not to exceed 90 days.~~

~~C. "Holding facility" means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed 30 days.~~

~~D. "Juvenile facility" means a facility separated or removed from any jail or police station, which is in charge of a matron, wherein all children within the provision of RCW Title 13 shall be sheltered. (Ord. 87-85 (part)).~~

~~1.28.030 Physical plant standards.~~

~~1. Functional Areas. Sleeping and living areas shall be designed to provide adequate confinement, reasonable prisoner to prisoner privacy, sight and sound surveillance and protection for prisoners and staff.~~

~~2. Single Occupancy Cells. Seventy two square feet or larger with not less than eight foot ceilings. A single occupancy cell should contain not less than 50 square feet of clear floor space.~~

~~3. Day Room Areas. A minimum of 35 square feet per prisoner, but not less than a total of 144 square feet.~~

~~4. Dormitories, When Included. A minimum and maximum capacity of eight to 10 males or four to 10 females and 60 square feet of floor space per prisoner in semiprivate sleeping areas. The dormitory shall also include day room space, and not less than 10 foot ceiling if double bunks are used.~~

~~5. Program, Recreation and Exercise Areas. Detention and correctional facilities shall provide adequate indoor program and recreation area(s) and a multipurpose outdoor exercise and activity area.~~

~~6. Kitchen and Dining Facilities. When kitchen facilities are included, such facilities shall be adequate for the sanitary preparation of three nutritionally balanced meals per day.~~

~~7. Dining area(s) shall allow conversational opportunities in adequate surroundings. Meals shall not be served in cells, except where necessary for the health, security and/or well-being of prisoners and staff.~~

~~8. Examining Room, Infirmary and Medical Isolation. Detention and correctional facilities shall provide space to be used as a medical examining room. This space may be multipurpose, but when used as an examining room it shall provide sight and sound privacy and be equipped with natural spectrum fluorescent lighting, a hand washing lavatory with a gooseneck spout, either foot, knee, push plate, electric eye beam or equivalent faucet controls, and sufficient lockable storage for medical equipment and supplies.~~

~~9. When an infirmary is located within the facility space it shall allow a minimum of three feet between the perimeter of each bed and walls, beds and any fixed obstruction; provided, that this three foot requirement does not apply to the distance between the head of a bed and the wall. The infirmary shall be equipped with its own lavatory, toilet, shower and bathtub.~~

LANGUAGE TO BE REPEALED

- ~~10. Visitation and Confidential Consultation. Space for visitation shall be included in detention and correctional facilities. Such space shall allow surveillance and the degree of control over physical contact deemed necessary by jail management for visible control, and shall simultaneously provide adequate seating for prisoners and their visitor(s).~~
- ~~11. Detention and correction facilities shall provide adequate facilities for confidential consultation(s).~~
- ~~12. Laundry. If laundry facilities are provided within the jail, such facilities shall be adequate for sanitary washing and drying of the jail laundry. Separate areas should be arranged for storage and sorting of soiled laundry and for the sorting, folding and storage of clean laundry.~~
- ~~13. Storage. Detention and correctional facilities shall include one or more secure storage area(s) for the storage of prisoner personal clothing and property and for necessary jail equipment and supplies.~~
- ~~14. Supervisory Stations. Sufficient space and equipment for the facility supervisor shall be provided in an area secure from prisoner access. An adequate control room shall be secure from an unauthorized access and it shall be capable for controlling access to and facility by the general public.~~
- ~~15. Sight and sound surveillance equipment, when used, shall be monitored in the control room or at the control panel and remote control operating devices shall also be in the control room. The control room shall be equipped with a sink and toilet.~~
- ~~16. Booking and Reception Areas. The booking area(s) shall include, but not be limited to, rest room facilities with shower, a "strip search" room, holding cell(s) (may be multiple occupancy), telephone and space for photographing, fingerprinting, delousing, intoxication determinations and health screening.~~
- ~~17. Building Codes. All standards contained in the current Washington building code established by RCW 19.27.030, the electrical wiring provisions of RCW Chapter 19.28, and more restrictive local standards shall be followed in all new jail construction.~~
- ~~18. Materials for Walls, Floors and Ceiling. In all jail facilities, walls, floors and ceilings shall be constructed with materials adequate to attain the degree of security required for each area of the facility. Such materials shall be easily cleanable, provide minimum sound transmission and fire protection. Polyurethane, neoprene or similar type materials shall not be used in padded cells. All paint used in a jail facility shall be fire resistant and nontoxic.~~
- ~~19. Entrances and Exits. Detention and correctional facilities shall have two secure vestibules for ingress and egress.~~
- ~~20. Elevators shall have no less than six feet by four feet inside dimensions.~~
- ~~21. A secure area shall be provided for loading and unloading prisoners.~~
- ~~22. Windows and/or Skylights. Windows and/or skylights shall be sufficient to provide natural light to all living areas, yet locations shall assure security from escape and introduction of contraband.~~
- ~~23. Noise Level. Noise level shall conform to the requirements of Chapter 173-60 WAC (Maximum environmental noise levels).~~
- ~~24. Prisoner living areas, inspection corridors and vestibules shall have secure lights with outside switch control. No electrical conduit shall be accessible from any cell, though each living unit may contain outlets and switches, provided they are unilaterally controllable by staff.~~
- ~~25. Lighting. Illumination at all times shall be adequate for security and surveillance, and daytime and evening illumination shall be sufficient to permit prisoners to read in their cells (30 footcandles at 30 inches minimum, 100 footcandles at 30 inches for medical examining areas, 50 footcandles at 30 inches for work areas).~~
- ~~26. Water Supply. There shall be an adequate supply of sanitary hot and cold water available at all times to prisoners. Hot water for general use shall be adequate.~~

LANGUAGE TO BE REPEALED

~~27. Plumbing—Toilets, Lavatories, Showers and Floor Drains. There shall be at least one toilet and lavatory for every eight prisoners. Separate facilities shall be provided for each sex.~~

~~28. A minimum of one shower head shall be provided for every 10 prisoners.~~

~~29. Floor drains shall be constructed to serve all cells, dormitories and other areas where necessary to facilitate cleaning. Floor drains shall be located outside the cell space to reduce the incidence of tampering and flooding. Plumbing connection and pipes shall be secure from uncontrolled access by prisoners.~~

~~30. Heating, Ventilation and Air Conditioning. The systems shall maintain mean temperatures between 65 and 85 degrees Fahrenheit.~~

~~31. The ventilating system shall provide for the number of air changes per hour as specified in the Uniform Building Code.~~

~~32. Support Systems—Fire Detection and Suppression. All correction facilities and detention facilities shall have smoke and fire detection and alarm equipment. Fire alarm systems shall conform to all state and local fire regulations. Sprinklers shall not be required within cells and conflicting requirements of local code provisions are preempted, when all other applicable code provisions relating to fire safety are met and an effective smoke control system is incorporated in the facility design.~~

~~33. Emergency Power. All detention and correctional facilities shall be equipped with emergency power sources with sufficient capacity to maintain communications and alarm systems, to move one jail elevator, where one exists, to provide minimum lighting within the facility and perimeter, and for the preparation of a light meal.~~

~~34. Minimum Security Facilities. Jail facilities shall be constructed to totally separate areas for housing prisoners who are allowed to go outside the jail regularly from all other prisoner areas. (Ord. 87-85 (part)).~~

~~1.28.040 General administration.~~

~~A. The chief law enforcement officer or his designee shall develop and maintain an organizational chart and an operations manual of policies and procedures.~~

~~B. Such chart and manual shall be reviewed by all staff and such review noted by signature prior to any assignment.~~

~~C. All jail policies and procedures should be reviewed and revised as appropriate on a continuing basis but at least annually. (Ord. 87-85 (part)).~~

~~1.28.050 Staff positions.~~

~~A. Written job descriptions shall define the responsibilities and designate the qualifications for each staff position.~~

~~B. Qualifications for correctional officers who have direct responsibility over prisoners and who are hired on or after the effective date of these minimum standards shall include, but not be limited to, a high school diploma, or equivalent.~~

~~C. All jail staff shall be selected in accordance with RCW Chapter 41.14 and/or other applicable legal requirements and shall be retained upon proven ability to perform.~~

~~D. Appropriate physical fitness standards should be set and enforced for all jail staff. (Ord. 87-85 (part)).~~

~~1.28.060 Training.~~

~~All correctional facilities shall provide preservice orientation to each newly hired jail staff member prior to being assigned to duty, regardless of his or her previous training or experience, prior to the assignment of any jail duties. Such training may be provided either by existing jail staff or other qualified persons, and must be verified by a written outline, and shall include, but not necessarily be limited to:~~

~~A. Review and understanding of all policies and procedures relating to his/her job responsibilities, specifically:~~

- ~~1. Agency organization;~~
- ~~2. Admission and release procedures;~~
- ~~3. Security and safety procedures;~~

LANGUAGE TO BE REPEALED

- ~~4. Contraband control, definition of, etc.,~~
- ~~5. Prisoner discipline,~~
- ~~6. Medical and mental health procedures,~~
- ~~7. Use of force,~~
- ~~8. Confidentiality of jail records;~~

~~B. Review of the Washington criminal justice system and custodial care standards as they relate to jail duties;~~

~~C. Identification and understanding of the function of agencies whose authority may extend to the jail's prisoners;~~

~~D. Appropriate training and qualifications in the use of weapons when jail duties include possession or carrying of a firearm;~~

~~E. All persons directly responsible for the supervision of prisoners shall successfully complete the Washington State Criminal Justice Training Commission basic correctional academy within the first six months of their employment, as required by WAC 139-36-010, unless such training has already been received;~~

~~F. Staff training shall further include such training as required by Section 1.28.290. (Ord. 87-85 (part)).~~

~~1.28.070 Records.~~

~~A. The chief law enforcement officer or his designee for each correctional facility shall establish a records system which shall comply with the requirements of this section.~~

~~B. Fiscal. Each detention and correctional facility shall maintain records which clearly indicate facility operation and maintenance costs according to generally accepted accounting principles. Such records shall separate specific jail functions from other department functions.~~

~~C. Confidentiality. All jail facility personnel shall be advised of the statutory provisions for confidentiality of jail records under RCW 70.48.100(2).~~

~~D. Individual Prisoner Records. The information required by the booking and release form shall be obtained for each booking and release. Such information will be retained in written form or within computer records. Other information retained in each prisoner's jail records shall include, but not be limited to, reports of disciplinary actions and/or unusual occurrences, and, in case of death, disposition of prisoner's property and remains.~~

~~E. Medical. Health care records shall be maintained separately in accordance with Section 1.28.310, to the extent necessary to maintain their confidentiality.~~

~~F. Prisoner Access. Each prisoner shall be permitted reasonable access to his jail record, or reasonable access to information contained therein, and such access may be limited only on substantial grounds of institutional security.~~

~~G. Transfer. When a prisoner is transferred to another facility, copies or summaries of all health records shall be transferred to the receiving facility; provided, that the requirements of Section 1.28.310 regarding confidentiality are followed. Applicable court orders shall be transferred. Summaries or copies of disciplinary records shall be transferred where such information may serve a substantial governmental interest in the safety or security of the receiving institution.~~

~~H. Population Reports. Each correction facility shall complete monthly reports on its population and shall be kept in accordance with the record retention schedule.~~

~~I. Population Accounting. Each correctional facility should, in addition, maintain an ongoing and a permanent accounting of its population by its own confinement categories, location or classification within the jail.~~

~~J. Jail Register. Each jail shall maintain an accurate jail register as required by RCW 70.48.100.~~

~~K. Infraction and Disciplinary. The chief law enforcement officer or his designee shall maintain a written record of all incidents which result in substantial property damage or bodily harm, or serious threat of substantial property damage or bodily harm. Major infraction reports and disciplinary actions shall become part of the prisoner's jail record.~~

LANGUAGE TO BE REPEALED

~~L. Incidents and Emergencies. All serious incidents and emergencies shall be recorded. For purposes of this section, the term "serious incidents and emergencies" includes, but is not limited to any death which occurs within a jail, attempted suicides, epidemics, completed escapes, any completed assault upon staff or prisoners, fires which result in any property damage or when any person is injured, flooding or other natural disasters or riots.~~

~~M. Incident Reports. An incident report shall be completed on any death, completed escape or fire. All such incident reports for a given month shall be maintained on a monthly basis with a monthly population accounting form. A copy of all incident reports shall be retained at the jail.~~

~~N. Activity Log. All jails should keep a log of daily activity within the facility for future accountability.~~

~~O. Personnel Training. Training records shall be maintained for each staff member employed by a detention or correctional facility.~~

~~P. Personnel Performance. Performance records should be maintained for each staff member employed by a detention or correctional facility and should be kept in their personnel file. (Ord. 87-85 (part)).~~

~~1.28.080 Emergency procedures.~~

~~A. The chief law enforcement officer or his designee shall formulate written emergency procedures relative to escapes, riots, rebellions, assaults, injuries, suicides or attempted suicides, outbreak of infectious disease, fire, acts of nature, and any other type of major disaster or disturbance. The emergency plan shall outline the responsibilities of jail facility staff, evacuation procedures and subsequent disposition of the prisoners after removal from the area or facility. Such plan shall be formulated in cooperation with the appropriate supporting local government units.~~

~~B. Emergency plans shall always be available to the officer in charge of the jail, and all personnel shall be aware of, and trained in, the procedures. (Ord. 87-85 (part)).~~

~~1.28.090 Fire prevention—Suppression.~~

~~A. The department of corrections or chief law enforcement officer shall consult with the local fire department having jurisdiction over the facility in developing a written fire prevention and suppression plan which shall include, but not be limited to:~~

- ~~1. A fire prevention plan to be part of the operations manual of policies and procedures;~~
- ~~2. A requirement that staff are alert to fire hazards during their daily rounds;~~
- ~~3. Fire prevention inspections at least semiannually by the fire department having jurisdiction; provided, that when such inspections cannot be obtained from such fire department the facility shall provide such inspections by an independent, qualified source;~~
- ~~4. A regular schedule for inspections, testing and servicing fire suppression equipment.~~

~~B. Results of all fire department inspections shall be kept on file at the jail, together with records of actions taken to comply with recommendations from such reports. (Ord. 87-85 (part)).~~

~~1.28.100 Overcrowding.~~

~~A. No prisoner shall be required to sleep directly on the floor for any length of time, or on a mattress on the floor in excess of one 72-hour period, unless there are reasonable grounds to believe that such provisions are necessary to prevent the prisoner from damaging property, inflicting bodily harm to himself or others, or substantially compromising the security of the jail.~~

~~B. Existing Jails. The chief law enforcement officer or his designee shall propose a maximum capacity for each detention or correctional facility within his or her jurisdiction. This capacity shall reflect a judgment as to the maximum number of prisoners who may be housed within the facility in a humane fashion.~~

LANGUAGE TO BE REPEALED

~~C. Overcrowding. The maximum capacity may be exceeded to the extent that the average daily population for any calendar month does not exceed the established maximum capacity.~~

~~D. Any report of conditions of overcrowding required under this section shall be considered as a notice of an emergency suspension of standards.~~

~~E. The chief law enforcement officer or his designee shall establish, with the cooperation of the presiding judge of the superior court, a procedure for release of prisoners before the end of their term or the transfer to other approved facilities when overcrowding occurs as defined in this chapter.~~

~~F. In the event of overcrowding caused in part by the existence of state prisoners, the chief law enforcement officer or his designee shall contact the state department of corrections in an effort to have such prisoners removed.~~

~~G. In the event of overcrowding caused in part by the existence of federal prisoners, the chief law enforcement officer or his designee shall contact the appropriate federal agency in an effort to have such prisoners removed. (Ord. 87-85 (part)).~~

~~1.28.110 Use of force.~~

~~A. The chief law enforcement officer or his designee shall establish and maintain written policies and procedures regarding the use of force and the use of deadly force, which shall be consistent with this section.~~

~~B. Only lawful and reasonable force to the person of a prisoner shall be used.~~

~~C. Deadly force shall not be used on a prisoner unless the person applying the deadly force believes that the prisoner poses an immediate threat of death or grievous physical injury to an officer or employee of a jail or any other person, or to prevent the escape of a prisoner arrested for a felony, and that the officer believes that other reasonable and available alternatives would be effective.~~

~~D. A written report on the use of such force or deadly force shall be made. In the case of deadly force a written report shall be made by each staff member involved or observing the use of such force. The report(s) shall be reviewed by the chief law enforcement officer or his designee who shall, if appropriate, investigate the incident further and make a determination whether appropriate, justified or reasonable force was used. Said determination shall be made a matter of record.~~

~~E. The "carotid sleeper hold" means any hold or restraint specifically designed to inhibit blood flow through the carotid arteries of the neck without inhibiting breathing by compression on the airway in the neck and without compression of the larynx or trachea. The carotid sleeper hold shall be considered to be deadly force.~~

~~F. The "choke hold" means any hold or restraint specifically designed to inhibit breathing by compression of the airway in the neck. The choke hold shall be considered to be deadly force.~~

~~G. The carotid sleeper hold generally presents less danger of causing serious injury or death than the choke hold and therefore is generally preferred over the choke hold in situations where such holds are permissible.~~

~~H. No neck hold shall be used, except by persons instructed in the dangers of the neck holds, its definition as deadly force, and the proper use and constraints of the carotid sleeper hold, by someone specifically trained in the use and dangers of neck holds. Refresher training shall be provided on at least an annual basis.~~

~~I. Medical attention shall be administered to the prisoner by a qualified medical professional as soon as possible after the use of the carotid sleeper hold or the choke hold. (Ord. 87-85 (part)).~~

~~1.28.120 Admissions.~~

~~1. General. The receiving officer shall determine that the arrest and confinement of each prisoner is being accomplished by a duly authorized officer, and a copy of all documents that purport to legally authorize the confinement shall become part of the prisoner's jail record.~~

LANGUAGE TO BE REPEALED

- ~~2. The delivery officer shall remain at the jail facility until the jail staff has accepted the prisoner.~~
- ~~3. Each prisoner, after completion of booking, shall be advised of his right to, and be allowed to complete, at least two telephone calls to persons of his choice who may be able to come to his assistance. If the prisoner chooses not to place the calls allowed, this information shall be noted on the booking form.~~
- ~~4. Reasonable provisions for communicating with non-English speaking, handicapped or illiterate prisoners shall be provided concerning the booking process, rules of the facility, privileges and other information pertinent to his rights and well-being while confined.~~
- ~~5. The booking process should be completed promptly unless the physical or mental condition of the prisoner necessitates delay.~~
- ~~6. Search/examination, When Allowed. The chief law enforcement officer or his designee shall establish and maintain written policies and procedures regarding pat searches, strip searches and body cavity searches, which shall be consistent with this section.~~
- ~~7. Each prisoner shall be searched for contraband in such a manner consistent with this subsection and written policies and procedures established thereunder, as is necessary to protect the safety of prisoners, staff and institutional security.~~
- ~~8. No strip search shall be conducted except pursuant to the written policies and procedures required by subsection 6 of this section.~~
- ~~9. No prisoner, other than a person committed to incarceration by order of a court or a person held for post conviction incarceration for a criminal offense, shall be strip searched without a warrant except where reasonable suspicion exists. A prisoner taken into custody pursuant to an arrest warrant or other court order issued before the person was arrested or otherwise taken into custody shall not be considered as committed to incarceration by order of a court for purposes of this section unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail, or bond. No strip search shall be authorized or conducted unless a thorough patdown search, a thorough electronic metal detector search, and a thorough clothing search, when appropriate, do not satisfy the safety, security or evidentiary concerns of the jail. Physical examination by licensed medical professionals solely for public health purposes shall not be considered strip searches. A prisoner may be strip searched if:
 - ~~a. There is reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other things concealed on the body of the person to be searched, that constitute a threat to the security of the facility;~~
 - ~~b. There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or~~
 - ~~c. There is reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.~~~~
- ~~10. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be based on consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:
 - ~~a. The nature of the offense for which the person to be searched was arrested;~~
 - ~~b. The prior criminal record of the person to be searched; and~~
 - ~~c. Physically violent behavior of the person to be searched, during or after arrest;~~
 - ~~d. Reasonable suspicion shall be deemed to be present when the prisoner has been arrested for:
 - ~~i. A violent offense as defined in RCW 9.9a.030 (17) or any successor statute;~~
 - ~~ii. An offense involving escape, burglary or the use of a deadly weapon, or~~
 - ~~iii. An offense involving possession of a drug or a controlled substance under RCW Chapter 69.41, 69.50, 69.52 or any successor statute.~~~~~~

LANGUAGE TO BE REPEALED

11. A written record or records of any strip search shall be maintained in the individual file of each person strip searched, which record(s) shall contain the following information:
- a. The name and serial number of the officer conducting the strip search and of all others present or observing any part of the strip search;
 - b. The time, date and place of the strip search; and
 - c. Any weapons, criminal evidence, other contraband or other thing or health condition discovered as a result of the strip search. Where reasonable suspicion is deemed present because of the nature of the arrest offense, the record shall contain the offense(s) for which the person searched was arrested. In other cases where reasonable suspicion or probable cause is found to be present the report shall also contain:
 - i. The name of the supervisor authorizing the strip search, and
 - ii. The specific facts constituting reasonable suspicion to believe the strip search was necessary.
12. No body cavity search shall be conducted except pursuant to a valid search warrant. No search warrant for a body cavity search shall be sought without prior authorization of the ranking shift supervisor, pursuant to the written policies and procedures required by Section 1.28.120(6). Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security or evidentiary concerns of the law enforcement agency.
13. Search procedures, to all strip searches and body cavity searches shall be conducted in a professional manner which protects the prisoner's dignity to the extent possible.
14. A strip search or body cavity search, as well as presearch undressing or postsearch dressing shall occur at a location made private from the observation of persons not physically conducting the search, except that a strip search to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search, or if all persons in the facility are being searched for the discovery of weapons or contraband. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals or when necessary to assure the safety of the prisoner or any person conducting the search.
15. No person may be present or observe during a strip search or body cavity search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search except at the request of the person being searched.
16. When a strip search or a body cavity search of a prisoner is conducted, it should include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars and injuries; "health tags"; and body vermin. Less complete searches should include the same checks to the extent possible.
17. Persons conducting a strip search or body cavity search shall not touch the person being searched except as reasonably necessary to effectuate the search of the person.
18. Body Cavity Searches. A body cavity search may be conducted only pursuant to subsection 1.28.120(11). Any body cavity search shall be performed under sanitary conditions and conducted by a physician, registered nurse, or registered physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search.
19. When a body cavity search is conducted by a licensed medical professional of the opposite sex, an observer of the same sex as the prisoner should be present.

LANGUAGE TO BE REPEALED

~~20. Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.~~

~~21. The officer requesting the body cavity search shall prepare and sign a report, which shall include:~~

- ~~a. A copy of the warrant and any supporting documents required;~~
- ~~b. The name and sex of all persons conducting or observing the search;~~
- ~~c. The time, date, place and description of the search; and~~
- ~~d. A statement of the results of the search and a list of any items removed from the person as a result of the search. The report shall be retained as part of the agency's records.~~

~~22. All physical markings and "health tag" identifications shall be recorded and made available to the appropriate jail employees and the medical professionals responsible for care of the prisoner under Section 1.28.250.~~

~~23. Particularly when force has been used during arrest, all visible injuries should be photographed.~~

~~24. Body Vermin. Any person with body vermin shall be treated appropriately.~~

~~25. Medical Complaints. Complaints of illness or injury expressed or observed during booking shall be checked promptly.~~

~~26. Communicable Diseases. A prisoner suspected of having a communicable disease shall be isolated without delay. Arrangements shall be made for his immediate transfer to a facility equipped to handle the suspected disease, unless the admitting facility can safely and effectively segregate and maintain the medically prescribed treatment.~~

~~27. Personal Property. The admitting officer shall record and store the prisoner's personal property and issue the prisoner a witnessed receipt.~~

~~28. Prisoner Weight. Each prisoner's weight should be measured and recorded upon admission.~~

~~29. Photographs and Fingerprints. Front view and side view identification photographs of each prisoner should stipulate the arresting agency or the booking agency and the date of arrest or the date of the photograph.~~

~~30. Copies of fingerprints shall be forwarded to the proper state and federal authorities.~~

~~31. Issuances. The correctional facility should establish its own policy on prisoners' use of personal clothing or jail uniforms.~~

~~32. At a reasonable time after the completion of booking, each prisoner shall be issued clean bedding, as well as such personal care items as required under Section 1.28.350.~~

~~33. Upon prisoner request, a reasonable supply of writing material shall be furnished to indigent prisoners. (Ord. 87-85 (part)).~~

~~1.28.130 Preclassification.~~

~~A. Prior to classification, reasonable precautions shall be taken to insure the safety and welfare of prisoners and the security of the institution.~~

~~B. Prisoners who, upon screening, appear to have serious and potentially dangerous problems with drugs, including alcohol, or signs of serious mental illness, shall be closely observed. Persons qualified and trained to evaluate such prisoners shall be contacted without delay.~~

~~C. Any prisoner suspected of being assaultive shall be housed separately prior to classification except where continual direct observation is maintained.~~

~~D. No prisoner known or suspected to be a danger to himself may be housed alone without continual direct observation. (Ord. 87-85 (part)).~~

~~1.28.140 Orientation.~~

~~As soon after booking as possible each prisoner shall receive an oral or written orientation. The orientation shall provide information regarding the prisoner's confinement including, but not limited to:~~

LANGUAGE TO BE REPEALED

A. Rules of prisoner conduct, including possible disciplinary sanctions, as provided in Section 1.28.220;

B. Procedures and conditions regarding classification and reclassification, as provided in Section 1.28.150;

C. Staff expectations of prisoner responsibilities, including if applicable, cleaning of prisoner living areas;

D. Prisoner rights and privileges;

E. The means of access to health care as required by Section 1.28.280, and other services;

F. An opportunity to ask and receive answers to questions shall be provided within a reasonable time. (Ord. 87-85 (part)).

1.28.150 Classification—Segregation.

A. Classification. The chief law enforcement officer or his designee shall establish written classification and reclassification procedures which shall be included in the manual of policies and procedures.

B. Upon entry, the on-duty supervisor shall be designated as responsible for classification of prisoners confined in the facility in accordance with such written procedures.

C. For each prisoner confined in a detention or correctional facility, those responsible for classification shall determine the degree of security required, housing assignment, program eligibility, and regulations for association within and outside the confinement area.

D. Classification Procedures. Each prisoner confined in a detention or correctional facility shall be interviewed at booking for classification determinations.

E. Each prisoner shall be classified as soon as reasonably possible.

F. The prisoner shall be promptly informed of any classification housing assignment decision other than "general population," and of his right to have that decision reviewed upon making a request. Such notice shall also be given with regard to any classification action.

G. A prisoner who is dissatisfied with his housing assignment shall be entitled to a review of the decision by the chief law enforcement officer or his designee upon making a written request, and shall be promptly informed of this right. Such request shall be reviewed by the chief law enforcement officer, or a designated staff member.

H. Criteria for Prisoner Classification. The primary criteria for classification shall be safety of the prisoner and the security of the institution.

I. Juveniles. No juvenile shall be held in a jail without sight and sound separation from adult prisoners. For purposes of this standard, a juvenile is a person under the chronological age of 18, who has not been transferred previously to adult courts. Provided, that no person under the chronological age of 16 shall be held in a jail or holding facility for adults. Provided further, that this standard does not preclude or prohibit the housing of remanded pretrial prisoners under the chronological age of 18 within juvenile detention facilities rather than city or county adult detention facilities. A juvenile shall not be considered "transferred previously to adult court" unless a juvenile court has held a hearing under RCW 13.40.110 or successor statute and ordered the juvenile transferred for adult criminal prosecution. The exercise of jurisdiction by a limited jurisdiction court in traffic, fish, boating or game offenses or infractions pursuant to RCW 13.04.030(6)(c) or successor statute does not constitute a "transfer."

J. A juvenile shall not be confined in a jail or holding facility for adults, except:

1. For a period not exceeding 24 hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or
2. For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

K. Females shall be segregated from visual communication and physical contact with male prisoners except under the direct supervision of a staff person.

LANGUAGE TO BE REPEALED

~~L. Special problem prisoners who endanger the health and safety of other prisoners or themselves shall be segregated and closely supervised.~~

~~M. Prisoners on work release or weekend confinement programs, and any other prisoners who have regular contact outside the jail shall be segregated from other prisoner categories.~~

~~N. Factors to be considered in classification shall include, but are not limited to, age, type of crime, pretrial versus post trial status and offender sophistication.~~

~~O. Administrative Segregation. The chief law enforcement officer shall establish written procedures governing the use of administrative segregation which are consistent with this subsection.~~

~~P. Administrative segregation shall only be used when the presence of the prisoner in general population poses a serious threat of death or injury to himself or others, damage to property, or the security or orderly operation of the facility. Written documentation shall be maintained citing the reasons for each case of a prisoner placed in administrative segregation. Written procedures shall permit the prisoner an opportunity to appeal within 72 hours (exclusive of weekends and holidays) the decision of placement in administrative segregation to the person(s) designated as responsible for classification. A hearing shall be conducted whenever a prisoner appeals placement in administrative segregation and the prisoner shall be afforded the same rights as those required for disciplinary hearings. Each prisoner in administrative segregation shall have his case reviewed at least every 30 days by the persons responsible for classification. Prisoners shall be held in administrative segregation only as long as the reason(s) for their initial placement there remains valid. (Ord. 87-85 (part)).~~

~~1.28.160 Good time.~~

~~The chief law enforcement officer or his designee shall develop written policies regarding time off for good behavior. Such policies shall insure that good time, when authorized by sentencing court, is given on a consistent basis, and in accordance with RCW 70.48.210 and 9.92.150. (Ord. 87-85 (part)).~~

~~1.28.170 Release and transfer.~~

~~A. Release. The releasing officer shall positively determine prisoner identity and ascertain that there is legal authority for the release.~~

~~B. The information required at the time of release shall be recorded for each prisoner released from the facility.~~

~~C. All prisoners being released shall sign a witnessed receipt for personal property returned.~~

~~D. Each prisoner discharged should receive a visual body check to detect changes from his admitting physical record.~~

~~E. Transfer. In addition to the release procedures designated above, the releasing officer shall determine that the receiving unit or person has the authority to accept custody. (Ord. 87-85 (part)).~~

~~1.28.180 Transportation.~~

~~When jail facility staff are responsible for prisoner transportation and when the prisoner is still in the custody and under the supervision of the jail, the chief law enforcement officer or his designee of each detention and correctional facility shall develop and maintain written instructions which insure the safety of the prisoners and staff shall be maintained. (Ord. 87-85 (part)).~~

~~1.28.190 Staffing.~~

~~At all times in all jails, at least one staff member shall be awake, alert and directly responsible for supervision and surveillance.~~

~~A. At all times a staff member of the same sex as the prisoner(s) shall be on duty or available within a reasonable time, which staff member shall be directly responsible for supervision which involves intimate physical contact or activities commonly afforded reasonable protection against opposite sex observation or supervision; provided, that this does not preclude jail staff from performing nonjail functions or being relieved from direct~~

LANGUAGE TO BE REPEALED

~~duties and remaining on call; provided, further, that personal observation of prisoners for purposes of this section or other sections of these standards may be by opposite-sex staffing as long as opposite-sex privacy concerns are given appropriate protection.~~

~~B. There shall be continual sight and/or sound surveillance of all prisoners.~~

~~C. Such surveillance may be by remote means, provided there is the ability of staff to respond face to face to any prisoner within three minutes; provided, that special problem prisoners are subject to the more stringent personal observation and supervision requirements of other sections.~~

~~D. In the absence of unusual behavior or other concerns for prisoner security and health, personal observation of prisoners by staff may be reduced to, but shall not be less frequent than, at least once within every 60-minute period.~~

~~E. Personal staff observations of prisoners should be recorded in writing and retained in the jail records.~~

~~F. Staff should be alert to prisoner depression, dissension, family rejection, loneliness, resistance to staff or programs, and the effects of use of substances prohibited by facility rules or by law. When such symptoms are discovered, such persons should be closely observed. (Ord. 87-85 (part)).~~

~~1.28.200 Supervision—Surveillance.~~

~~A. General Security:~~

~~1. All jails shall establish a positive means of identifying prisoners.~~

~~2. Perimeter security shall be maintained.~~

~~3. Security devices shall be maintained in proper working condition at all times.~~

~~4. No prisoner shall be permitted to have authority over other prisoners.~~

~~5. Prisoner Counts. Detention and correctional facilities shall develop a system for taking and recording prisoner counts. This procedure shall be followed at shift changes and at other regular or irregular times.~~

~~B. Contraband Control:~~

~~1. Any item or person entering or leaving a jail shall be subject to search.~~

~~2. When housed in a correctional facility, work-release prisoners and prisoners who have regular contact with other prisoner classifications or entrance to areas frequented by other prisoners shall be subject to search.~~

~~3. There shall be irregularly scheduled searches for contraband in detention and correctional facilities and all areas frequented by prisoners.~~

~~4. Conspicuously posted signs shall display the statutory penalty for giving or arranging to give anything to a prisoner without official authorization (RCW 9A.76.010, 9A.76.140, 9A.76.150, 9A.76.160). Non-English-speaking visitors shall be informed of the statutory penalty either verbally or by posted signs in the appropriate language. (Ord. 87-85 (part)).~~

~~1.28.210 Critical articles.~~

~~A. All detention and correctional facilities shall establish written procedures to insure that weapons shall be inaccessible to prisoners at all times.~~

~~B. Weapon lockers shall be located outside of the booking and confinement areas.~~

~~C. Whenever possible, keys to weapon lockers should be located outside of booking and confinement areas.~~

~~D. Keys and Locking Devices. Key regulations shall be established by the chief law enforcement officer and read and initialed by all staff.~~

~~E. A control point shall be designated for key cataloguing and logging the distribution of keys.~~

~~F. There shall be at least two sets of jail facility keys, one set in use and the other stored securely but easily accessible to staff for use in the event of an emergency.~~

~~G. All keys not in use shall be stored in a secure key locker inaccessible to prisoners.~~

~~H. Emergency keys shall be marked and placed where they may be quickly identified in case of an emergency.~~

LANGUAGE TO BE REPEALED

~~I. Keys to locks on doors inside the security area of a jail should be on a separate ring from keys to locks on doors or gates to the outside of the jails. At no time should both rings be carried by a person inside the jail simultaneously.~~

~~J. Keys shall be accounted for at all times and the distribution certified at each shift change.~~

~~K. Jail facility keys shall never be issued to a prisoners.~~

~~L. If electronic devices are used in place of keys, there shall be key or other manual override capabilities available for immediate use in case of an emergency and/or a failure of the system.~~

~~M. Protective Equipment. Protective equipment, tear gas and any other chemical suppressing agent shall be kept in a secure area, inaccessible to prisoners and unauthorized persons, but quickly accessible to officers of the facility.~~

~~N. Kitchen Utensils, Tools and Toxic Substances. Dangerous kitchen utensils and tools shall be marked for identification, recorded and kept in a secure place.~~

~~O. Toxic substances shall be kept in locked storage, and use of toxic substances shall be strictly supervised. Such substances, including cleaning supplies, shall be stored in a separate area from food supplies. (Ord. 87-85 (part)).~~

~~1.28.220 Prisoner rights.~~

~~A. The chief law enforcement officer or his designee shall establish uniform rules and disciplinary sanctions to guide the conduct of all prisoners, which rules shall designate major and minor infractions.~~

~~B. Printed rules and possible disciplinary sanctions shall be given to each prisoner and/or posted conspicuously throughout the jail. Non-English speaking prisoners shall be informed of the rules either orally, in writing or by posted signs in the appropriate language.~~

~~C. Rules of Conduct.~~

~~1. All major infractions of the rules shall be reported in writing to the supervisor prior to shift change by the staff member observing or discovering the act. Such reports shall become a part of the prisoner's jail record.~~

~~2. Minor Infractions. Minor violations of the rules may be handled informally by any staff member by reprimand, warning or minor sanction as defined by local rules. Such incidents may become part of the prisoner's record only with the approval of the supervisor and verbal notification to the prisoner. (Ord. 87-85 (part)).~~

~~1.28.230 Discipline.~~

~~A. Disciplinary Committee.~~

~~1. The chief law enforcement officer or such person's designee or designees, shall hear and decide all charges or major violation of facility rules and impose sanctions.~~

~~2. Any facility staff member involved in a charge shall not be allowed to participate as a hearing officer with respect to that charge.~~

~~B. Disciplinary Procedures.~~

~~1. Any charges pending against a prisoner shall be acted on as soon as possible and no later than 72 hours (exclusive of Saturdays, Sundays and holidays) after observation or discovery of the infraction. Action in this context means either a disciplinary hearing or a decision not to impose any sanction requiring a hearing.~~

~~2. At least 24 hours prior to hearing, the prisoner shall receive a copy of the written infraction report made in conformance with Section 1.28.220C. If the prisoner is illiterate, the infraction report shall be read to him.~~

~~3. The prisoner alleged to have committed a major infraction shall have, and be promptly advised of, the following rights:~~

~~a. The prisoner shall have the right to be present at all stages of the hearing, except during the decisional deliberations;~~

~~b. The prisoner shall be allowed to appear on his own behalf, to present witnesses, and to present documentary evidence unless the exercise of such~~

LANGUAGE TO BE REPEALED

~~rights would be unduly hazardous to institutional safety or correctional goals, in which case the prisoner shall be given a written statement of the reasons for such judgments and the prisoner's record shall contain a statement with regard to such grounds;~~

~~c. A prisoner who is unable to represent himself in such a hearing shall be informed of this right to be assisted by another person in understanding and participating in the proceedings;~~

~~d. The prisoner shall be advised of the decision in a written notice giving the reasons for the disciplinary action, if any, and evidence relied on; and~~

~~e. The prisoner shall be permitted to appeal the disciplinary hearing decision to the department of corrections or the chief law enforcement officer or his or her designee in accordance with appeal procedures established by each facility and included in the printed rules. All disciplinary proceedings shall be recorded.~~

~~4. There shall be a finding of guilt based on the preponderance of evidence before imposition of a sanction.~~

~~C. The above provisions do not preclude imposition of administrative segregation, according to procedures required by Section 1.28.150, or other appropriate limitations on freedom of the prisoner involved prior to such disciplinary proceeding; provided, that each such restriction shall be in accordance with the other provisions in these standards; provided further, that any such restrictions shall be based on legitimate grounds of institutional security or prisoner safety, and such action shall be noted in the prisoner's records.~~

~~D. Corrective Action or Forms of Discipline.~~

~~1. Nonpunitive corrective action should be the first consideration in all disciplinary proceedings.~~

~~2. When punitive measures are imposed, such measures shall be in accordance with law and recommended sanctions, appropriate to the severity of the infraction, and based on considerations of the individual involved.~~

~~E. Acceptable forms of discipline shall include the following:~~

~~1. Loss of privileges;~~

~~2. Removal from work detail or other assignment;~~

~~3. Recommendation of forfeiture of good time credit; and~~

~~4. Transfer to the maximum security or segregation section.~~

~~F. Limitations on Punishment.~~

~~1. No prisoner or group of prisoners shall be given authority to administer punishment to any other prisoner or group of prisoners.~~

~~2. Deprivation of regular feeding, clothing, bed, bedding or normal hygienic implements and facilities shall not be used as a disciplinary sanction.~~

~~3. Correspondence privileges shall not be denied or restricted, except in cases where the prisoner has violated correspondence regulations. In no case shall the correspondence privilege with any member of the bar, holder of public office, the courts or the department of corrections or chief law enforcement officer be suspended.~~

~~4. Restrictions on Visitation.~~

~~a. Visitation privileges should not be denied or restricted as a sanction for infractions of rules of the institution unrelated to visitation.~~

~~b. Under no circumstances shall attorney-client visits be restricted.~~

~~G. No prisoner shall be held in disciplinary segregation for more than 15 days for any one violation and no more than 30 days for all violations arising out of one incident. Continuous confinement for over 30 days must be approved by the director of the department of corrections or the chief law enforcement officer or such person's designee.~~

~~H. Corporal punishment and physical restraint e.g., handcuffs, leather restraints and strait jackets, shall not be used as sanctions. (Ord. 87-85 (part)).~~

LANGUAGE TO BE REPEALED

~~1.28.240 Grievance procedure.~~

~~The chief law enforcement officer for each jail, correctional facility, detention facility or juvenile facility should develop and maintain procedures for the collection of prisoner grievances. Such procedures should provide for persons to whom grievances are to be directed, for timely review of grievances, and for written notification of action taken regarding the grievance. (Ord. 87-85 (part)).~~

~~1.28.250 Responsible physician and licensed staff.~~

~~A. The facility shall have a designated health authority with responsibility for health care services pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or agency. When this authority is other than a physician, final medical judgments shall rest with a single designated responsible physician licensed in the state of Washington.~~

~~B. Matters of medical and dental judgment shall be the sole province of the responsible physician and dentist respectively; security regulations applicable to facility personnel shall also apply to health personnel.~~

~~C. The responsible physician or medical authority should submit a quarterly report on the health delivery system and health environment and an annual statistical summary to the chief law enforcement officer.~~

~~D. State licensure and/or certification requirements and restrictions shall apply to health care personnel.~~

~~E. All medical personnel shall practice within the scope of their license. Where applicable, treatment shall be performed pursuant to a written standing or direct order.~~

~~F. Verification of current licensing and certification credentials should be on file in the jail. (Ord. 87-85 (part)).~~

~~1.28.260 Health care policy and procedures.~~

~~A. Written standard operating procedures approved by the responsible physician and governing unit or official designated by it shall consist of but not be limited to the following:~~

- ~~1. Receiving screening;~~
- ~~2. Health appraisal data collection;~~
- ~~3. Nonmerchantable medical services;~~
- ~~4. Deciding the emergency nature of illness or injury;~~
- ~~5. Availability of dental referral examination, and treatment;~~
- ~~6. Provision of medical and dental prostheses;~~
- ~~7. First aid;~~
- ~~8. Notification of next of kin or legal guardian in case of serious illness, injury or death;~~
- ~~9. Providing chronic care;~~
- ~~10. Providing convalescent care;~~
- ~~11. Providing medical preventive maintenance;~~
- ~~12. Screening, referral and care of mentally ill and retarded inmates and prisoners under the influence of alcohol and other drugs;~~
- ~~13. Implementing the special medical program;~~
- ~~14. Delousing procedures;~~
- ~~15. Detoxification procedures; and~~
- ~~16. Pharmaceuticals.~~

~~B. The work of qualified medical personnel shall be governed by written job descriptions which shall be approved by the responsible physician. (Ord. 87-85 (part)).~~

~~1.28.270 Health screening.~~

~~A. Receiving screening shall be performed on all prisoners upon admission to the facility before being placed in the general population or housing area, and the findings recorded on a printed screening form. The screening shall include inquiry into:~~

- ~~1. Current illness and health problems including those specific to women;~~
- ~~2. Medications taken and special health requirements;~~

LANGUAGE TO BE REPEALED

3. Screening of other health problems designated by the responsible physician;
4. Behavioral observation, including state of consciousness and mental status;
5. Notation of body deformities, trauma markings, bruises, lesions, ease of movement, jaundice, and other physical characteristics;
6. Conditions of skin and body orifices, including rashes and infestations; and
7. Disposition/referral of inmates to qualified medical personnel on an emergency basis.

B. The health appraisal data collection should be completed for each prisoner within 14 days after admission to the facility in accordance with the adopted standard operating procedures; provided, that this subsection does not apply to prisoners who are able to receive medical care in the community.

C. Such health appraisal should include, at a minimum, a physical assessment by a licensed health care provider, recording of vital signs and a general review of mental status; provided, that such appraisal is not intended to be a standard "annual physical" but rather such minimum physical review as is necessary to detect any major problems. As appropriate, laboratory and diagnostic tests to detect communicable disease, including venereal diseases and tuberculosis, and other tests and appraisals should be included within such appraisal.

D. Health history and vital signs should be collected by medically trained or qualified medical personnel who are properly licensed, registered or certified as appropriate to their qualifications to practice. Collections of all other health appraisal data should be performed only by qualified medical personnel. Review of the results of the medical examination, tests and identification of problems should be made by a physician or designated qualified medical personnel. All health appraisal data should be recorded on the health data forms approved by the responsible physician. (Ord. 87-85 (part)).

1.28.280 Access to health care.

A. If medical services are delivered in the jail, adequate equipment supplies and materials shall be provided for the performance of primary health care delivery.

B. At the time of admission to the facility, prisoners shall receive a written communication consistent with the provisions of Section 1.28.120, explaining the procedures for gaining access to medical services.

C. Prisoners' medical complaints shall be collected daily and acted upon by the medically trained personnel. An appropriate priority shall be established and treatment by qualified medical personnel follow.

D. Work-release prisoners should be allowed to see their own physicians outside of the jail and to receive consistent care within the jail.

E. Sick Call. Sick call shall be conducted by a physician and/or other qualified medical personnel and shall be available to each prisoner as follows:

1. In facilities of less than 50 prisoners, at least once per week at a minimum;
2. Facilities of 50 to 200 prisoners at least three times per week; and
3. Facilities of over 200 prisoners at least five times per week; provided, that the average daily population may be calculated exclusive of work-release prisoners when they receive their care in the community.

F. When sick call is not conducted by a physician, the responsible physician shall arrange for the availability of a physician at least once each week to respond to prisoner complaints regarding services which they did or did not receive from other medical providers; further, regardless of complaints, the responsible physician shall review the medical service delivered, as follows:

1. At least once per month in jails with less than 50 prisoners;
2. At least every two weeks in facilities of 50 to 200 prisoners; and
3. At least weekly in facilities of over 200 prisoners.

G. Medical and dental prostheses shall not be denied when the health of the inmate-patient would otherwise be adversely affected as determined by the responsible physician.

LANGUAGE TO BE REPEALED

H. Emergency Care.

1. First aid kit(s) shall be conveniently available in all jails.
2. The responsible physician shall approve the contents, number, location and procedure for periodic inspection of the kit(s).
3. Emergency medical and dental care shall be available on a 24-hour basis in accordance with a written plan which includes:
 - a. Arrangements for the emergency evacuation of the prisoner from the jail;
 - b. Arrangements for the use of an emergency medical vehicle; and
 - c. Arrangements for the use of one or more designated hospital emergency rooms, other appropriate health facilities, or on-call physician and dentist services. (Ord. 87-85 (part)).

1.28.290 ~~Health care training.~~

A. Jail personnel shall be trained in standard first aid equivalent to that defined by the American Red Cross and usual emergency care procedures prior to employment or during the probationary period. Written standard operating procedures and training of staff shall incorporate the following steps:

1. Awareness of potential medical emergency situations;
2. Notification or observation determination that a medical emergency is in progress;
3. First aid and resuscitation;
4. Call for help; and
5. Transfer to appropriate medical provider.

B. At least one person per shift within sight or sound of the prisoner shall have trained in receiving screening and basic life support cardiopulmonary resuscitation (CPR).

C. Jail personnel shall be given training regarding the recognition of general symptoms of mental illness and retardation.

D. All persons responsible for the delivery of medications shall have training regarding the medical, security and legal aspects of such activity. (Ord. 87-85 (part)).

1.28.300 ~~Medications control.~~

A. The jail's standard operating procedures for the proper management of pharmaceuticals shall include:

1. A formulary specifically developed for the facility when stock medications are maintained within the jail. Such formulary shall be in accordance with WAC 360-16-070 (clinic dispensary);
2. A policy that jails with an on-site pharmacy shall adhere to regulations established by the state board of pharmacy. Such policy shall require, as a minimum, a consulting pharmacist for the operation of the pharmacy or the dispensing shall be done by each prescribing physician in person (WAC 360-16-070);
3. A policy regarding the prescription of all medications with particular attention to behavior modifying medications and those subject to abuse;
4. A policy regarding medication dispensing and administration which shall include, but not be limited to:
 - a. Nonmedical jail personnel delivering medication(s) to prisoners,
 - b. Disposition of medication(s) brought in by prisoners at the time of admission to the facility,
 - c. Packaging of medication(s): The medications system shall insure that all medications are kept in container which have been labeled securely and legibly by a pharmacist or the prescribing physician, or in their original containers labeled by their manufacture. Medications shall not be transferred from the original container except for the preparation of a dose administration,
 - d. Safeguards with regard to delivery of medications to prisoners, and

LANGUAGE TO BE REPEALED

~~e. Disposition of unused medication(s);~~

~~5. A policy regarding the maximum security storage and weekly inventory of all controlled substances, nonprescription medication(s), syringes, needles and surgical instruments. Jails that do not have an on-site pharmacy shall provide for a consulting pharmacist to determine that medication(s) have been properly managed.~~

~~B. The person delivering medication(s) shall be accountable for following the orders of medical staff. (Ord. 87-85 (part)).~~

~~1.28.310 Health care records.~~

~~A. The responsible physician shall be responsible for maintaining patient medical record files. Such files shall contain the completed receiving screening form, health appraisal data collection forms, all findings, diagnoses, treatments, dispositions, prescriptions and administration of medications, notes concerning patient education, notations of place, date and time of medical encounters and terminations of treatment from long-term or serious medical or psychiatric treatment.~~

~~B. The responsible physician shall insure the confidentiality of each prisoner's medical record file and such file shall be maintained separately to the extent necessary to maintain their confidentiality.~~

~~C. The responsible physician or medical staff designated by him shall communicate information obtained in the course of medical screening and care to jail authorities when necessary for the protection of the welfare of the prisoner or other prisoners, management of the jail, or maintenance of jail security and order.~~

~~D. A copy or summary of the medical record file shall routinely be sent to any jail or correctional institution to which a prisoner is transferred at the time of such transfer. A copy of such file or parts thereof shall also be transmitted upon the written authorization of a prisoner to designated physicians and medical facilities.~~

~~E. The person delivering medications shall record the actual time of the delivery in a manner and on a form approved by the responsible physician. (Ord. 87-85 (part)).~~

~~1.28.320 Special medical issues.~~

~~A. Informed Consent.~~

~~1. All examinations, treatments and procedures affected by informed consent standards in the community shall likewise be observed for prisoner care.~~

~~2. No prisoner shall be given medical treatment against his will except as necessary to prevent the spread of communicable disease, to relieve imminent danger to the life of the prisoner, or, in the case of serious mental disorders, to prevent imminent danger to the life of his or her person or to the lives of others. All procedures required by RCW Chapter 71.05 shall be followed in any case of involuntary commitment or involuntary treatment of mentally ill persons within jails.~~

~~3. In case of minors, the informed consent of parent, guardian or legal custodian applies where required by law.~~

~~B. In all cases, the responsible physician shall give a clear statement to the prisoner patient of his diagnosis and treatment.~~

~~C. Special Medical.~~

~~1. Jail staff shall report any symptoms of prisoner mental illness or retardation to medical personnel for appropriate evaluation and treatment.~~

~~2. A special program shall exist for prisoners requiring close medical supervision. A written individual treatment plan for each of these patients shall be developed by a physician which includes directions to medical and nonmedical personnel regarding their roles in the care and supervision of these patients.~~

~~3. Programs for the prevention of suicide, to include early identification of risk, appropriate diagnosis and referral, and close observation as required by Section 1.28.190 should be developed by medical staff.~~

LANGUAGE TO BE REPEALED

~~4. Appropriate medical supervised treatment in accordance with written procedures established under Section 1.28.260 shall be given in the jail to prisoners determined to be mentally ill or under the influence of alcohol, opiates, barbiturates and similar drugs when such care is not provided in a community health facility.~~

~~D. Reasonable physical restraint when necessary for medical reasons shall be medically directed, except that in an emergency reasonable physical restraint may be used to control a grossly disturbed or violent prisoner, but the review and direction of the health care staff or local mental health professionals shall be properly obtained. (Ord. 87-85 (part)).~~

~~1.28.330 Access to facilities.~~

~~A. Regular bathing (shower) shall be permitted at least twice each week.~~

~~B. Each prisoner shall have access to toilet, sink, drinking water and adequate heat and ventilation. (Ord. 87-85 (part)).~~

~~1.28.340 Food.~~

~~A. General Food Requirements.~~

~~1. At least three meals a day shall be served at regular intervals. The morning meal shall be served within 14 hours of the previous day's evening meal.~~

~~2. Jails may arrange for prepared meal service or serve frozen packaged meals, provided these meals conform to the requirements of this section.~~

~~B. Nutritional and Caloric Intake.~~

~~1. Jail menus shall be reviewed by the local county health department, the county extension service or other qualified nutrition consultant to insure that diets approximate the dietary allowances specified.~~

~~2. Diets ordered by medical staff shall be strictly observed. (Ord. 87-85 (part)).~~

~~1.28.350 Clothing — Bedding — Personal items.~~

~~A. Clothing.~~

~~1. Provision shall be made for separate insect proof clothing storage to prevent migration of lice from infested clothing.~~

~~2. Each jail shall insure that prisoners' outer garments are laundered and made available to them at least once a week, and that prisoners' undergarments and socks are laundered and made available to them at least twice a week.~~

~~3. Detention and correctional facilities shall, if necessary, clean and sanitize personal clothing prior to storage.~~

~~B. Bedding.~~

~~1. Each prisoner shall be issued clean bed linens for the first night's detention and at least once a week thereafter. Bed linens shall include:~~

~~a. One detachable cloth mattress cover and one sheet; or~~

~~b. Two sheets; or~~

~~c. One double size sheet.~~

~~C. Mattresses shall have a washable surface and be sanitized at least semiannually.~~

~~D. Blankets shall be issued upon arrival and shall be washed at frequent intervals to maintain a clean condition, but at least once every 60 days, and always before reissue.~~

~~E. Personal Care Items.~~

~~1. Personal care items issued to each prisoner in detention and correctional facilities shall include, but not be limited to soap and towel. Female prisoners shall be supplied with necessary feminine hygiene items.~~

~~2. Toothpaste or powder, toothbrush and comb shall be available for purchase by all prisoners, provided, that prisoners without funds shall have access to these minimum items without cost.~~

~~3. Each prisoner shall be permitted to have a reasonable number of additional personal items, the possession of which does not substantially impede jail management or security. (Ord. 87-85 (part)).~~

~~1.28.360 Sanitation.~~

LANGUAGE TO BE REPEALED

A. General.

1. All jails shall be kept in a clean and sanitary condition, free from any accumulation of dirt, filth, rubbish, garbage or other matter detrimental to health.
2. Jail staff shall insure that each prisoner shall clean his own living area daily. Convicted prisoners may be required to clean other space within the confinement area and pretrial detainees may be permitted to do so voluntarily.

B. Insects, Rodents and Pets.

1. Insects and rodents shall be eliminated by safe and effective means. Prisoners shall be removed from areas in which insecticides and rodenticide are being used.
2. Pets shall not be allowed in the jail facilities.

C. Laundry. Each jail shall arrange for adequate laundry services. (Ord. 87-85 (part)).

1.28.370 Services.

A. Commissary.

1. The department of corrections or chief law enforcement officer of each detention or correctional facility shall either establish, maintain and operate a commissary, or provide prisoners with a list of approved items to be purchased at least once a week at local stores.
2. Commissary items shall include books, periodicals and newspapers, or the facility shall make arrangements to order any such items from publishers and/or local newsstands.

B. Proceeds from a jail facility store shall be used for operation and maintenance of the commissary service and/or prisoner welfare expenses.

C. If jail rules do not permit prisoners to keep money on their persons, payments for commissary purchases shall be made by debit on a cash account maintained for the prisoner. All expenditures from a prisoner's account shall be accurately recorded and receipted.

D. Basic Hair Care. All jails shall make reasonable arrangements to provide basic hair care.

E. Library Services. In consultation with state and/or local library service units, each jail shall make provision for library services.

F. Legal Assistance.

1. When adequate professional legal assistance is not available to prisoners for purposes of preparing and filing legal papers, a jail shall provide access to necessary law books and reference materials.
2. Facility rules shall not prohibit one prisoner from assisting another in the preparation of legal papers.

G. Religious Services.

1. Upon request from a prisoner, the jail facility shall arrange religious services or confidential religious consultation.
2. Detention and correctional facilities with an average daily population of 25 or more shall arrange for weekly religious services.
3. Prisoners should be permitted to observe religious holidays and receive sacraments of their faith.
4. Attendance at religious services shall be voluntary and prisoners who do not wish to hear or participate shall not be exposed to such services.

H. Counseling, Guidance and Ancillary Services. Counseling services should be available to provide prisoners in detention or correctional facilities with an opportunity to discuss their problems and interests.

I. The chief law enforcement officer may utilize volunteer counseling resources available in the community.

J. Professionals should serve in an advisory capacity when jail facility personnel or community volunteers engage in counseling.

K. Counselors may submit written recommendations to the chief law enforcement officer or disciplinary review body.

LANGUAGE TO BE REPEALED

~~L. Prisoners shall not be required to receive counseling services unless ordered by the appropriate court or the disciplinary review body. (Ord. 87-85 (part)).~~

~~1.28.380 Programs.~~

~~A. Each prisoner shall be allowed three hours per week of physical exercise, to be scheduled no less than three separate days. Outdoor as well as indoor exercise shall be provided.~~

~~B. Work Programs. The chief law enforcement officer may establish work programs.~~

~~C. Participation in work programs by pretrial detainees shall be voluntary.~~

~~D. Education and Training Programs.~~

~~1. The chief law enforcement officer should arrange for the development of an education and training program, utilizing local school districts, colleges, trade schools, unions, industry, interested citizens and other available community, state and federal resources.~~

~~2. Jails should provide courses to prepare qualified prisoners for the General Education Development test, and provide the opportunity to take the test.~~

~~E. Leisure Time Activity Programs.~~

~~1. Detention or correctional facilities should provide opportunities for all prisoners to participate in leisure time activities.~~

~~2. Volunteers may be used to plan and supervise exercise programs and other leisure time activities, but paid staff member(s) should have designated responsibility for supervision of such program. (Ord. 87-85 (part)).~~

~~1.28.390 Telephone usage.~~

~~A. The governing unit shall establish and post rules which specify regular telephone usage times and the maximum length of calls (not to be less than five minutes).~~

~~B. Telephone usage hours shall include time during the normal work day and time during the evening, at least once a week per prisoner; provided, that established social telephone usage hours shall not preclude reasonable access to a telephone to contact the prisoner's attorney or legal representation.~~

~~C. Calls shall be at the prisoner's expense or collect; provided, that appropriate protection of access to an attorney shall be maintained for prisoners without funds.~~

~~D. Location of telephone facilities shall insure reasonable privacy, and telephone conversations shall not be monitored, tape recorded, or spot checked except by court order.~~

~~E. Reasons for calls shall be the personal concern of the prisoner, except in consideration of requests for emergency calls beyond normal telephone hours. (Ord. 87-85 (part)).~~

~~1.28.400 Mail.~~

~~A. Newspapers, Books, Periodicals and Other Printed Materials and Photographs.~~

~~1. Prisoners shall generally be permitted to subscribe to and otherwise receive books, newspapers, periodicals and other printed materials or photographs which may lawfully be delivered through the United States mails. Such materials shall be denied a prisoner only if such denial furthers a substantial governmental interest in jail security or the welfare of prisoners or staff.~~

~~2. When such materials are withheld from a prisoner:~~

~~a. The prisoner shall receive immediate written notice that the publication is being denied, accompanied by an explanation of the reason(s) for the denial;~~

~~b. The affected prisoner shall be promptly informed of his right to have such decision reviewed by the disciplinary hearing body, the department of corrections, or the chief law enforcement officer upon written request;~~

~~c. A written decision of the review of the denial, including reason(s) shall be given to the prisoner requesting review.~~

~~B. General Correspondence.~~

~~1. Incoming or outgoing mail shall be retained no more than one business day.~~

~~2. Except in the case of prisoners without funds, prisoners shall be permitted to mail out any number of letters. Prisoners without funds shall be permitted to mail up to three letters per calendar week at public expense, provided upon proper~~

LANGUAGE TO BE REPEALED

~~showing the number may be increased. Each prisoner shall be permitted to mail out any number of letter to his attorney, and the courts.~~

~~3. No restriction shall be placed on the number of letters a prisoner may receive or on the persons with whom he may correspond, except by court order of a court of competent jurisdiction, or as provided under subdivision C.3 of this section.~~

~~4. These rules shall not preclude a prisoner being required to place his name and a return post office address on outgoing mail.~~

~~C. Opening or Censoring Mail.~~

~~1. No general restriction of the number of letters prisoners may receive or of classes of persons with whom they may correspond shall be made by facility rule or policy.~~

~~2. Incoming mail shall not be censored, but may be opened and inspected for contraband, cash and checks and may be perused for content when the responsible staff person designated by the chief law enforcement officer or his designee has reasonable grounds to believe that the content of a letter may present a clear and present danger to institutional security, or violates state or federal law. Whenever mail is not delivered by the jail staff directly to the prisoner to whom it is addressed, it shall be resealed.~~

~~3. Except by order of a court of competent jurisdiction, outgoing mail shall not be opened unless the responsible staff person designated by the chief law enforcement officer or his designee has reasonable grounds to believe that the content of a letter may present a clear and present danger to institutional security, or violates state or federal law.~~

~~D. Notice of Disapproval of Prisoner Mail.~~

~~1. When a prisoner is prohibited from sending a letter, the letter and a written and signed notice stating the reason for disapproval, and indicating the portion(s) of the letter causing disapproval, shall be given to the prisoner.~~

~~2. When a prisoner is prohibited from receiving a letter, the letter and a written signed notice stating reason(s) for denial and indicating the portion(s) of the letter causing the denial shall be given the sender. The prisoner shall be given notice in writing that the letter has been prohibited, indicating the reason(s) and the sender's name.~~

~~3. When a prisoner is prohibited from sending or receiving mail, the affected prisoner is entitled to have such decision reviewed by the disciplinary hearing body, the chief law enforcement officer or his designee upon written request and shall be promptly informed of this right.~~

~~4. A written decision of the review of such denial shall be promptly delivered to the prisoner.~~

~~E. Limitations.~~

~~1. Incoming mail of post conviction prisoners that is clearly marked as coming from an attorney, court, or elected federal, state, county or city official shall be opened only in the presence of the addressee.~~

~~2. Mail to or from attorneys, courts or elected federal, state, county or city officials shall not be read.~~

~~3. There shall be no additional restrictions on prisoner correspondence for disciplinary or punishment purposes, unless the prisoner has violated rules as to correspondence. Upon proper showing of the alleged violation, the prisoner's mail may be restricted for a limited time, but such restriction shall not apply to attorney-client mail or correspondence with the courts.~~

~~F. Packages.~~

~~1. Incoming.~~

~~a. If a facility allows prisoners to receive packages, all packages shall be opened and inspected.~~

LANGUAGE TO BE REPEALED

~~b. Packages may be received only if the contents conform to rules adopted by the chief law enforcement officer or his designee, and a witnessed receipt for permissible items shall be promptly delivered to the prisoner, unless such package is opened in the presence of the prisoner and all items are given directly to him.~~

~~2. Outgoing packages of prisoner's personal property shall be inspected to insure ownership and compliance with United States postal regulations.~~

~~G. Contraband. Items which are not permitted by jail rules may be destroyed upon the prisoner's written request, placed in the prisoner's personal property box, or returned collect to the sender. A receipt for permissible items received in the mail, including money or checks shall be signed by a staff member and a copy thereof promptly delivered to the prisoner. Contraband, as defined in RCW 9A.76.010, shall be turned over to the property authorities, for handling as evidence, for disciplinary action or possible prosecution under RCW 9A.76.140, 9A.76.150, 9A.76.160, or other applicable statutes. (Ord. 87-85 (part)).~~

~~1.28.410 Visitation:~~

~~A. General contact visitation should be provided for those prisoners determined to present a minimal degree of risk to the safety and security of the institution.~~

~~B. The degree of security required for each prisoner during visitation shall be determined by the person or persons responsible for classification under Section 1.28.150.~~

~~C. Social Visits:~~

~~1. The chief law enforcement officer or his designee shall establish and post rules governing regular visits and specifying times therefor.~~

~~2. All unsentenced prisoners and sentenced prisoners who have been in custody for more than 30 days shall be allowed a minimum of three hours total visitation per week. Those prisoners who have been in custody for less than 30 days shall be allowed a reasonable amount of visitation.~~

~~3. Preference on who visits will be determined by the inmate.~~

~~4. Except for immediate family members, visitors 17 years of age and under shall be accompanied by a parent or guardian.~~

~~D. The chief law enforcement officer or his designee may grant special visitation privileges to visitors who have traveled long distances, to visitors for hospitalized prisoners, and for other unusual circumstances.~~

~~E. Business and Professional Visits. Each prisoner shall be allowed confidential visits from his attorney or legal assistants and his pastor.~~

~~F. By prior arrangement with the chief law enforcement officer or his designee, a prisoner shall be allowed confidential visits for business or educational reasons.~~

~~G. Law enforcement professionals shall be allowed to interview prisoners at reasonable times and with prior notice, unless it appears circumstances do not permit delay.~~

~~H. Visitor Regulations:~~

~~1. Signs giving notice that all visitors and their accompanying possessions are subject to search shall be conspicuously posted at the entrances to the facility and at the entrance to the visiting area.~~

~~2. Any person may refuse a search, but subsequent to such refusal may then be denied entrance.~~

~~3. Other reasons for denying entrance to visitors shall include but not be limited to:~~

~~a. An attempt, or reasonable suspicion of an attempt to bring contraband into the facility;~~

~~b. Obvious influence or effect of alcohol or controlled substances;~~

~~c. Request from the prisoner's physician;~~

~~d. Request from the prisoner;~~

LANGUAGE TO BE REPEALED

~~e. Reasonable grounds to believe a particular visit would present a substantial danger to jail security or management or the welfare of prisoners, staff or other visitors.~~

~~I. Whenever a visitor is refused admittance during regular visiting hours, the prisoner shall receive notice of the refusal stating the reason(s) therefor. The affected prisoner is entitled to have such decision reviewed by the disciplinary hearing body, the chief law enforcement officer or his designee upon written request and shall be promptly informed of this rights. A written decision of the reviewing body's determination stating the reason(s) therefor, shall be furnished to the prisoner who requested such review. (Ord. 87-85 (part)).~~

~~1.28.420 Severability.~~

~~Should any part of this chapter be declared illegal, the validity of the remaining provisions shall not be affected. And should it appear that any provision of this chapter is in conflict with any statutory provision of the state of Washington, then said chapter provision shall be deemed to be inoperative and null and void insofar as they are in conflict therewith and shall be modified to conform to such statutory provision. (Ord. 87-85 (part)).~~



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-044

File ID: AB2019-044 Version: 1 Status: Agenda Ready
 File Created: 01/07/2019 Entered by: DBrown@co.whatcom.wa.us
 Department: County Council Office File Type: Discussion
 First Assigned to: Council Planning and Development Committee
 Agenda Date: 02/26/2019 Next Mtg. Date: Hearing Date:

TITLE FOR AGENDA ITEM:

Discussion regarding proposed amendments to Title 20, Zoning, and Title 23, Shoreline Management, related to vacation rental units

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion regarding proposed amendments to Title 20, Zoning, and Title 23, Shoreline Management, related to vacation rental units

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
01/15/2019	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee

Attachments: Staff Memo, Proposed Amendments Title 20 and Title 23, PDS Staff Report

Final Action:
Enactment Date:
Enactment #:

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 Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Cliff Strong, Senior Planner *CS*

THROUGH: Mark Personius, AICP, Director *MP*

DATE: November 15, 2018

SUBJECT: Vacation Rental Regulations – Title 20 and Title 23 Amendments

Background

At its December 4, 2018, meeting, the Council's Planning and Development Committee will continue its discussion of regulating short-term rental units such as bed and breakfasts and vacation rental units. I have again attached the staff report, draft ordinance, and Exhibits A & B, showing the proposed amendments, which you previously reviewed at your August 8, 2018, meeting.

The proposed zoning code amendments (Exhibit A) would add vacation rentals as an accessory use in UR, URM, URMX, RR, RRI, TZ, RC, STC, AG, and R, and as a conditional use in the Lake Whatcom Watershed Overlay District, subject to a series of performance standards listed in WCC 20.80, the "supplemental requirements" chapter of the zoning code; require those on septic to provide a current satisfactory Report of System Status upon registration (and thereafter every three years); require owners to annually register with Planning and Development Services; and amend two bed and breakfast definitions and add a definition of "vacation rental unit." (See attached staff report for more detailed descriptions of these amendments.)

The proposed Shoreline Management Program (SMP) amendments (Exhibit B) would include vacation rental units and bed and breakfast establishments as part of a single family residential use (rather than a commercial use) for purposes of determining permitted uses in various shoreline designations; remove bed and breakfasts as a conditional use in the Urban Conservancy and Conservancy shoreline designations; and amend several definitions and add a definition of "vacation rental unit." These would make the shoreline code more consistent with the proposed zoning code amendments. (See attached staff report for more detailed descriptions of these amendments.)

Both sets of draft amendments have been reviewed by the Planning Commission, who recommended approval. In 2016, the Council held a hearing on the SMP amendments and passed Resolution 2016-039, forwarding the SMP amendments to the Department of Ecology (DOE) for its review (which has since approved them). However, the Council has not had a hearing on the zoning code amendments, having chosen to hold off until DOE approved the SMP amendments.

At your August 8, 2018, meeting, the P&D Committee asked for additional information, including:

- Updating the 2015 data regarding the number of vacation rentals in Whatcom County
- Providing you with information on vacation rental complaints, and
- Providing you with tax revenue information

Requested Information

Number of Vacation Rentals in Whatcom County

Previously, PDS staff had informed Council that in November 2015 there were 414 vacation rental units listed in Whatcom County, and you asked for an update to this number for 2018.

This 2015 information was obtained using the two most common websites (Airbnb and VRBO), counting the number (and estimating the locations) shown on those websites' maps of available rentals.

Using this same method in November 2018, staff counted 164 vacation rental unit listings in Whatcom County.

It may seem odd that there are fewer listings today than in 2015. Staff would like to point out, however, that this is only an approximation of the number of rental units, as those maps only show what's available for the dates one enters; it does not include those units that may be available at other times. Furthermore, we have searched two websites, and some of the units may be listed on both (addresses are not provided).

Vacation Rental Complaints

There are several types of complaints that could be filed, and the complaint would be handled by different departments, depending on the nature of the complaint.

The following chart shows the potential complaints citizens may submit to PDS about vacation rental homes and lists what department and/or agency would best handle the complaint:

Possible Alleged Complaint	PDS or Referral	Name of Department and/or Agency Referral
Noise, Disorderly House, Criminal and/or Suspicious Activities	Referral	Advise complainant to contact the Whatcom County Sheriff's Office.
On Site Sewage System (OSS) Overtaxing of and/or Failure	Referral	Advise complainant to contact the Whatcom County Environmental Health Department.
Unkempt Residence – Garbage, Trash, Solid Waste, Rats	Referral	Advise complainant to contact the Whatcom County Environmental Health Department.
Multiple Vacation Rentals on One Parcel, Including ADUs	PDS	Advise complainant to complete a PDS Code Enforcement Investigation Request (CEIR).
Detached Structures being used as Sleeping Quarters/Bunkrooms	PDS	Advise complainant to complete a PDS Code Enforcement Investigation Request (CEIR).
Number of People Exceeding the Permitted Vacation Rental Capacity	PDS	Advise complainant to complete a PDS Code Enforcement Investigation Request (CEIR).
Parking on the County Right-of-Way	Referral	Advise complainant to contact the Whatcom County Sheriff's Office.
Parking on Neighboring Properties or Private Easements	N/A	Advise the complainant that the parking issue is civil. Recommend complainant resolves parking issues with the owner of the vacation rental.

According to our Code Enforcement staff, we have no way of tracking complaints specific to vacation rentals in our permit tracking system (Tidemark). However, PDS did receive several vacation rental complaints in 2015, all along Northshore Road, all on the same date, all from one person.

Tax Revenue Information

Steve Oliver, County Treasurer, responded to your inquiring about tax revenues as follows:

We cannot provide a simple answer to your query due to secrecy agreements with the Department of Revenue that protect the individual data of tax remitters or any data that potentially would allow a person to intuit or estimate protected data either by business classification and/or geographic location. For example, we could not disclose transient lodging tax revenues for Lummi Island because it would be dominated by the Willows Inn. Because of the way that AirBnB, HomeAway, VRBO, and similar businesses are classified by DOR, using a very specific classification code that separates it from the majority of other transient lodging remitters, it creates a very small and discrete list of remitters that is highly dominated by one remitter. I believe that disclosing this information could be interpreted as a violation of our secrecy agreements with the DOR. The specific data is available, but I believe we are barred from disclosing it. I'm happy to visit this issue with the Prosecuting Attorney if necessary.

What we can share is the following data (reporting 2017 data as the last complete annual data set):

- There's no specific industry (NAICS) classification for "vacation rentals" per se but these uses are generally found in a few classification codes that generally encompass all transient lodging services.
- In 2017, approximately \$228,000 in local sales tax was remitted by approximately 149 remitters comprising transient lodging services reported in the unincorporated county. This may or may not be inclusive of all revenues as we are relying upon DOR assigned industry (NAICS) classifications to identify these revenues, which may or may not be accurate. The lack of local business license/registration data hinders the County's ability to identify these revenue sources more accurately or noncompliance with state or local tax laws.
- In 2017, approximately \$685,000 local special hotel/motel transient lodging taxes were also remitted to Whatcom County. This tax is an additional 2% local option tax in addition to other state and local sales taxes.

Additionally, the County Executive's Office recently shared with me that the Bellingham/Whatcom County Tourism Bureau in 2019 is going to start acquiring data from AirDNA.co in an effort to try to understand that sector of the local transient lodging market better. As a stakeholder in the tourism bureau, that data may be available to the County for other uses.

City of Bellingham Regulations

Though not requested by Council, staff thought you might want to know how the City of Bellingham has handled this issue, as its Council recently adopted regulations for short-term rentals.

Bellingham adopted a much more complicated set of regulations, with various zoning districts having slightly different regulations. In general, their lower density, strictly residential districts have more stringent regulations, while the higher density, more multi-family/commercial districts have laxer regulations in terms of length of stay, number of units, permitting process, owner occupancy, allowance in accessory dwelling units, and allowance of events (e.g., weddings, banquets, parties, etc.). Perhaps of particular note to Council is that they do not permit short-term rentals in the Lake Whatcom Watershed on properties that drain into Basin One or that are within their Shoreline Jurisdiction. Their ordinance also makes provisions to revisit some of their proposed caps if their vacancy rate reaches 5% or higher.

Next Steps

PDS would like to get direction from the Committee, especially as to whether to continue discussion with the Council or to schedule the ordinance for introduction and action by the County Council.

If the Council chooses to adopt the ordinance, staff would suggest making it effective a few months out. This would give PDS time to develop the registration system established by proposed WCC 20.80.960(3), to conduct outreach to vacation rental owners, and to add registration fees to the Unified Fee Schedule.

Attachments:

- Staff Report
- Draft Ordinance No. ____
- Exhibit A – Proposed Title 20 (Zoning) amendments
- Exhibit B – Proposed Title 23 (Shoreline Master Program) amendments

PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

ADOPTING AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 ZONING AND TITLE 23 SHORELINE MANAGEMENT PROGRAM, RELATING TO REGULATION OF VACATION RENTAL UNITS

WHEREAS, Use of single family homes as vacation rentals has become increasingly common in Whatcom County in recent years; and

WHEREAS, The Whatcom County Code Title 20 Zoning and Title 23 Shoreline Management Program lacks provisions for defining and permitting such uses; and

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to the Whatcom County Code related to regulation of vacation rental units; 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 and conclusions:

FINDINGS OF FACT

PLN2014-00020 (Title 20 Zoning Code Amendments)

1. Whatcom County Planning and Development Services submitted an application for a zoning code amendment to add a definition and standards for vacation rental units.
2. The amendment would add vacation rentals as an accessory use in zones where “bed and breakfast establishments” are currently permitted as an accessory use.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 1, 2014.
4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on November 26, 2014.
5. On January 8, 2015, the Whatcom County Planning Commission held a duly noticed public hearing on a proposal to amend the Zoning Code (WCC Title 20) to allow vacation rental units as accessory uses in most zones, and recommended approval.

6. On _____, 2018, the Whatcom County Council held a duly noticed public hearing on the proposed amendments.
7. WCCP Policies 2A-13, 2FF-1, 2FF-3, 2FF-4, and 7K-4 support small home-based businesses in the rural areas of the county.
8. WCCP Policies 2FF-3 and 2FF-4 support rural businesses provided they do not adversely impact rural character or surrounding uses.
9. WCCP Policy 2DD-2 supports protecting rural character through development regulations.

PLN2016-00011 (Title 23 Shoreline Master Program Amendments)

10. Whatcom County Planning and Development Services submitted an application for a SMP code amendment to define B&Bs and vacation rental units as residential uses.
11. PDS estimates that about a quarter of vacation rental and bed and breakfast uses offered on two of the most popular vacation rental websites is located within the Shoreline Master Program jurisdiction.
12. The amendment would list vacation rental and bed and breakfast uses as residential uses in the Shoreline Master Program, consistent with the proposed zoning code amendments.
13. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2016.
14. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 28, 2016.
15. The Planning Commission held a public hearing on the proposed amendments on June 23, 2016, notice of which was published in the Bellingham Herald on June 10, 2016.
16. The County Council held a duly noticed public hearing on the amendments on October 25, 2016, and passed Resolution 2016-039, directing staff to forward the SMP amendments to the Department of Ecology for its review.
17. Pursuant to WAC 173-26-110 and Resolution No. 2016-039, the staff forwarded the proposed SMP amendments to the Washington State Department of Ecology for review as a limited master program amendment.
18. On April 3, 2018, the Department of Ecology granted conditional approval of the proposed amendments, requesting some minor definitional changes that have been incorporated into the proposal.
19. WCCP Policies 2A-13, 2FF-1, 2FF-4, and 7K-4 support economic sustainability in the rural areas of the County.
20. WCCP Policy 2FF-4 supports rural 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.

CONCLUSIONS

1. The zoning amendments defining vacation rental units and regulating their operation is in the public interest.
2. The Shoreline Master Program amendments regarding vacation rental units and bed and breakfasts in the shoreline jurisdiction is in the public interest.
3. 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 on Exhibits A and B.

ADOPTED this _____ day of _____, 2018.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

Approved Denied



Civil Deputy Prosecutor

Jack Louws, Executive

Date: _____

EXHIBIT A

Whatcom County Code Title 20 Zoning AMENDMENTS

Note: Proposed changes since the last version went to the P&D Committee are highlighted in yellow.

CHAPTER 20.20 URBAN RESIDENTIAL (UR) DISTRICT

.....

20.20.100 Accessory uses.

.....

.106 Bed and breakfast establishments, except in the Lake Whatcom Watershed Overlay District, where bed and breakfast establishments are a conditional use, per WCC 20.51.070.

.107 Vacation rental units, per WCC 20.80.960, except in the Lake Whatcom Watershed Overlay District, where vacation rental units are a conditional use, per WCC 20.51.070.

.....

CHAPTER 20.22 URBAN RESIDENTIAL – MEDIUM DENSITY (URM) DISTRICT

.....

20.22.100 Accessory uses.

.....

.107 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.24 URBAN RESIDENTIAL MIXED (UR-MX) DISTRICT

.....

20.24.100 Accessory uses.

.....

.107 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.32 RESIDENTIAL RURAL (RR) DISTRICT

.....

20.32.100 Accessory uses.

.....

.106 Bed and breakfast establishments, except in the Lake Whatcom Watershed Overlay District, where bed and breakfast establishments are a conditional use, per WCC 20.51.070.

.107 Vacation rental units, per WCC 20.80.960, except in the Lake Whatcom Watershed Overlay District, where vacation rental units are a conditional use, per WCC 20.51.070.

.....

CHAPTER 20.34 RURAL RESIDENTIAL - ISLAND (RR-I) DISTRICT

.....

20.34.100 Accessory uses.

.....

.107 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.35 ELIZA ISLAND (EI) DISTRICT

.....

20.35.100 Accessory uses.

.....

.108 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.36 RURAL (R) DISTRICT

.....

20.36.100 Accessory uses.

.....

.109 Bed and breakfast establishments, except in the Lake Whatcom Watershed Overlay District, where bed and breakfast establishments are a conditional use, per WCC 20.51.070.

.110 Vacation rental units, per WCC 20.80.960, except in the Lake Whatcom Watershed Overlay District, where vacation rental units are a conditional use, per WCC 20.51.070.

.....

CHAPTER 20.37 POINT ROBERTS TRANSITIONAL ZONE (TZ) DISTRICT

.....

20.37.100 Accessory uses.

.....

.108 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.40 AGRICULTURE (AG) DISTRICT

.....

20.40.100 Accessory uses.

.....

.114 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.42 RURAL FORESTRY (RF) DISTRICT

.....

20.42.150 Conditional uses.

.....

.160 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.51 LAKE WHATCOM WATERSHED OVERLAY DISTRICT

.....

20.51.060 Accessory uses.

All accessory uses in the underlying zone districts are permitted except as expressly prohibited or made conditional, or further conditioned by this chapter. (Ord. 2013-043 § 1 Exh. A, 2013).

20.51.070 Conditional uses.

All conditional uses in the underlying zone districts shall remain conditional uses unless expressly prohibited, made conditional, or further conditioned by this chapter. In addition, the following uses shall only be conditionally permitted:

.....

.074 Bed and Breakfast Establishments and Inns.

.075 Vacation Rental Units, per WCC 20.80.960, with the following additional criteria in the Lake Whatcom Watershed Overlay District:

- (1) In vacation rental units adjacent to the Lake Whatcom shoreline, the owner shall post notice to renters information about prevention of aquatic invasive species.
- (2) The owner of a vacation rental unit using an on-site septic system shall provide to the department a current satisfactory Report of System Status upon registration and shall provide updated reports every three years thereafter for conventional gravity systems or annually for all other systems.

.....

CHAPTER 20.59 RURAL GENERAL COMMERCIAL (RGC) DISTRICT

.....

20.59.100 Accessory uses.

.....

.108 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.61 SMALL TOWN COMMERCIAL (STC) DISTRICT

.....

20.61.100 Accessory uses.

.....

.111 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.62 GENERAL COMMERCIAL (GC) DISTRICT

.....

20.62.100 Accessory uses.

.....

.106 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.64 RESORT COMMERCIAL (RC) DISTRICT

.....

20.64.100 Accessory uses.

.....

.113 Vacation rental units, per WCC 20.80.960.

.....

CHAPTER 20.80 SUPPLEMENTARY REQUIREMENTS

.....

20.80.580 Parking space requirements.

For the purpose of this ordinance, the following parking space requirements shall apply (See also WCC [20.97.140](#)):

.....

(7.1) Bed and Breakfast Establishments and Inns: 1 for each rented sleeping unit in addition to the parking spaces required for the single-family dwelling.

.....

20.80.960 Vacation rental units

Vacation rental units are subject to all of the following standards:

- (1) Vacation rental units in the Lake Whatcom Watershed Overlay Zone are subject to a conditional use permit per WCC 20.51.070 and WCC 20.84. A conditional use permit may set standards that are more restrictive than the standards in this section.
- (2) There shall be no more than one vacation rental unit per lot.
- (3) To operate, each vacation rental unit must be currently registered by the owner in the departmentCounty's Vacation Rental Registry, maintained by Planning and Development Services. Registration must be reapplied for annually, by the date of the owner's first registration. A registration fee may be collected by the department, as specified in the County's Unified Fee Schedule. The department may revoke registration of a vacation rental unit if the owner the department has been cited the owner for two or more code violations within a 12-month period. The department shall issue a registration number for each vacation rental unit and the owner shall include the registration number in all advertising for the unit. The registration shall apply to the owner and not run with the land. Information provided at the time of registration shall include, at a minimum:

 - (a) Name and telephone number of the owner or an authorized agent who is available on a 24-hour basis to resolve problems associated with the unit,
 - (b) A eCopies of the signage required to be posted on the front exterior of the unit giving the 24-hour contact information for the owner or authorized agent, and a description of the specific posting location by subsection (8),
 - (c) A checklist of safety features required by the Building Official and Fire Marshal that the owner certifies are present in the unit,
 - (d) A statement that by signing the registration/permit application the owner or agent authorizes departmentthe County staff to inspect the property, and agrees to engage in dispute resolution and act in good faith to resolve disputes with neighbors arising from the use of a dwelling as a vacation rental.
 - A copy of the notice posted inside the unit providing guests with 24-hour contact information, safety information and rules of conduct, and
 - (e) A copy of the current State of Washington business license, including the Unified Business Identifier (UBI) number.

- (4) The maximum number of persons permitted to stay in a vacation rental unit shall not exceed two per the number of legally permitted bedrooms being rented, plus two additional persons. The owner shall not advertise occupancy higher than the maximum number permitted by this subsection or by a conditional use permit, whichever is the lesser.
- (5) Other than the contact information required to be posted by subsection (8)c, there shall be no outdoor signage or any other visible feature that would distinguish the unit from surrounding residential units.
- (6) The vacation rental shall be operated in a way that will prevent unreasonable disturbances to nearby residents, per WCC Chapter 9.40.
- (7) Off-street parking shall be provided per WCC 20.80.580(50).
- (8) The owner of the vacation rental unit shall post notices to renters in prominent places, to include:
 - a. The maximum number of guests, as calculated in subsection (4)
 - b. regarding Guest rules of conduct and their responsibility not to trespass on private property or create disturbances.
 - c. The name and telephone number of the owner or authorized agent who is available on a 24-hour basis to resolve problems associated with the unit (to be posted both inside, for the guests, and outside, near the primary entrance).
 - d. A copy of the current State of Washington business license, including the Unified Business Identifier (UBI) number.

.....

CHAPTER 20.97 DEFINITIONS

.....

20.97.027 Bed and breakfast establishment.

“Bed and breakfast establishment” means a privately owned dwelling that is the primary residence(s) of the owners and in which, for compensation, one to two rooms are used as sleeping units to house or lodge individuals or families for periods of less than ~~one month~~30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.

20.97.028 Bed and breakfast inn.

“Bed and breakfast inn” means a privately owned dwelling that is the primary residence(s) of the owners in which, for compensation, three to five rooms are used as sleeping units to house or lodge individuals or families for periods of less than ~~one month~~30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.

.....

20.97.445.1 Vacation Rental Unit.

"Vacation Rental Unit" means a single-family dwelling unit, detached accessory dwelling unit, or accessory apartment that, for compensation, is rented as a single unit used to lodge individuals or families for a period of less than 30 days and where the owner is not present in the rented unit during the rental period. Individual sleeping rooms shall not be rented individually.

DRAFT

EXHIBIT B
Whatcom County Code Title 23
Shoreline Management Program
AMENDMENTS

(Note: Changes recommended by the Department of Ecology are highlighted in yellow.)

CHAPTER 23.30 SHORELINE JURISDICTION AND AREA DESIGNATIONS

.....

23.30.055 Urban conservancy shoreline area – Conditional uses.

The following may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- A. All other residential development.
- B. Low intensity water-oriented commercial limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities subject to the criteria in WCC 23.100.050. Low intensity non-water-oriented commercial limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities, subject to the criteria in WCC 23.100.050(B)(1)(d).

.....

23.30.095 Conservancy shoreline area – Conditional uses.

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this program:

- A. All other residential development.
- B. Low intensity water-oriented commercial limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities. Low intensity non-water-oriented commercial uses limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities may be permitted as a conditional use, subject to the criteria in WCC 23.100.050(B)(1)(d).

.....

CHAPTER 23.60 SHORELINE PERMITS AND EXEMPTIONS

.....

23.60.070 Fees.

- A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, preapplication conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County unified fee schedule in effect at that time.
- B. When any given project requires more than one of the following permits or applications, the total amount of shoreline fees shall be reduced by 25 percent:
 - 1. Preliminary plat application.
 - 2. Rezone application.

- 3. Major development permit.
- 4. Planned unit development.
- 5. Binding site plan.
- C. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.
- D. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.
- E. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.
- ~~F. No fees shall be collected from an agency of Whatcom County government.~~

.....

CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS

.....

23.100.050 Commercial use.

Commercial development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.

.....

C. Shoreline Area Regulations.

.....

- 3. Urban Conservancy. Low intensity water-oriented commercial use and development limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non-water-oriented commercial limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.

.....

- 7. Conservancy. Low intensity water-oriented commercial use and development limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non-water-oriented commercial limited to resort, ~~bed and breakfast~~, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.

.....

CHAPTER 23.110 DEFINITIONS

.....

23.110.020 B definitions

.....

- 4. "Bed and Breakfast" means a privately owned dwelling that is the primary residence(s) of the owner in which, for compensation, one to five rooms are used as sleeping units to house

or lodge individuals or families for periods of less than 30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.

(Scrivener's note: Subsequent numbers shall be renumbered)

.....

23.110.030 C definitions

.....

6. "Commercial development" means those developments whose primary use is for retail, service, or other commercial ~~business~~ activities. Included in this definition are developments such as hotels, motels, ~~bed and breakfast establishments~~, shops, restaurants, banks, professional offices, grocery stores, laundromats, recreational vehicle parks, commercial rental campgrounds and cabins, whether public or private, and indoor or intensive outdoor commercial recreation facilities. Not included are private camping clubs, marinas, signs, utilities, bed and breakfasts, vacation rental units, and other development.

.....

23.110.180 R definitions

.....

7. "Residential development" means buildings, earth modifications, subdivision, and use of land primarily for human residence, including, but not limited to: single-family and multifamily dwellings, condominiums, mobile homes and mobile home parks, boarding homes, family daycare homes, adult family homes, retirement and convalescent homes, bed and breakfasts, and vacation rental units, together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, and hotels and other transient housing are not included in this definition.

.....

23.110.220 V definitions.

1. "Vacation Rental Unit" means a single-family dwelling unit, detached accessory dwelling unit, or accessory apartment that, for compensation, is rented as a single unit used to lodge individuals or families for a period of less than 30 days and where the owner is not present in the rented unit during the rental period. Individual sleeping rooms shall not be rented individually.

(Scrivener's note: Subsequent numbers shall be renumbered)

Whatcom County Planning & Development Services Staff Report

Vacation Rentals Title 20 Zoning Code Amendments & Title 23 Shoreline Master Program Amendments

I. BACKGROUND INFORMATION

File #s PLN2014-00020 (Title 20 Zoning Code Amendments) & PLN2016-00011 (Title 23 Shoreline Master Program Amendments)

File Name: Vacation Rentals – Zoning and Shoreline Master Program Code Amendments

Applicant: Whatcom County Planning and Development Services (PDS)

Summary of Request: Amend Whatcom County Code Title 20 (Zoning) to define and regulate short-term rentals of residential units, and Whatcom County Code Title 23 (Shoreline Master Program (SMP)) to add definitions of “bed and breakfast establishment” (B&Bs) and “vacation rental unit” and to remove B&Bs from the list of commercial uses that are subject to a shoreline conditional use permit.

Location: Countywide.

Staff Recommendation: As it has been awhile since Council has considered this proposal, Planning and Development Services recommends that the Council Planning & Development (P&D) Committee review the proposed code amendments and provide direction to staff. If the P&D Committee chooses to schedule the ordinance before the whole Council for action, staff will schedule it for introduction and a public hearing.¹

Reason for Amendments

Over the past several years, the County has received public complaints regarding vacation rental units, generally regarding noisy behavior of guests, which is enforced by the Sheriff under the “disorderly house” provisions of WCC 9.40. Complaints related to land use considerations (such as overflow parking) have occurred when a rental property is used as a special event venue for weddings, retreats, or other gatherings. Council directed staff to develop regulations for vacation rentals to help minimize impacts to surrounding residents.

Existing Code

Zoning Code

The Whatcom County Zoning Code (WCC Title 20) does not currently prohibit rental of single-family dwellings, either short or long term. Lacking such a prohibition, PDS interprets the Zoning Code to permit vacation rentals wherever single family dwellings are permitted.

¹ The Council has already held a public hearing on PLN2016-00011 prior to the SMP amendments being sent to the Department of Ecology; however, Council has not held a hearing on PLN2014-00020.

Whatcom County’s zoning code does not list vacation rentals as a distinctive land use that is either permitted or prohibited. The zoning code does define and regulate transient room rentals for bed and breakfasts, rooming houses, and hotels as shown in Table 1:

Table 1. Current Zoning Regulation of Transient Room Rentals

<i>Use</i>	<i>Number of Persons</i>	<i>Number of Rooms</i>	<i>Owner Occupied</i>	<i>Permitted Use in:</i>	<i>Accessory Use in:</i>	<i>Conditional Use in:</i>
B&B Establishment WCC 20.97.027		1 or 2	Yes	RC in Pt. Roberts,	UR, URM, URMX, RR, RRI, TZ, RC, STC, AG, R	RF
B&B Inn WCC 20.97.028		3 to 5	Yes	RC in Pt. Roberts	RC, STC	UR, URM, URMX, RR, RRI, TZ, AG, R
Rooming House WCC 20.97.355	3 or more	No minimum or maximum		RC (except Maple Beach in Pt. Roberts) 3-8 persons		URM
Motel WCC 20.97.260		No minimum or maximum		RC (16 or fewer rooms), AO, TC, GI, GC, STC		RGC, Pt. Roberts Special District
Hotel WCC 20.97.185		6 or more		RC (16 or fewer rooms), AO, TC, GI, GC, STC		RGC, Pt. Roberts Special District

“Rooming house” is a permitted use only in the RC zone (except the Maple Beach section of Point Roberts) and a conditional use in URM. A “hotel” or “motel” is a permitted use only in commercial zones, including RC. A “bed and breakfast establishment” (an accessory use in residential and rural zones) allows for renting 1 or 2 rooms, while a “bed and breakfast inn” (a conditional use in residential and rural zones) allows for renting 3 to 5 rooms. Both types of bed and breakfast establishments must be owner-occupied.

In September 2014, staff compiled potential options for regulating vacation rentals from a land use standpoint and discussed them with the P&D Committee:

1. **Permitted outright as a single family dwelling.** Allow vacation rentals of any duration in residential zones without conditions.
2. **Permitted with performance standards.** Allow vacation rentals as a permitted use in all rural and residential zones, subject to conditions.
3. **Permitted in specified locations, with performance standards.** Same as 2 but permitted only in certain zones or geographic areas.
4. **Permitted with registration.** Same as 2 or 3 but with licensing or registration requirements.
5. **Prohibition.** Prohibit vacation rentals in all residential zones.

The P&D Committee expressed a preference for exploring Option 2, permitting vacation rentals countywide with performance standards, but with no additional licensing or registration requirements.

Shoreline Management Program

The SMP does not list or define a vacation rental unit use. However, the SMP definition of “residential development” expressly excludes “camping sites or clubs, recreational vehicle parks, motels, hotels and other transient housing.” Therefore PDS believes vacation rental units, like B&Bs, would be considered commercial uses under the current SMP.

During the course of the discussion with the P&D Committee, staff pointed out that even if vacation rentals and B&Bs were allowed under the zoning code, the current SMP regulations would make it very

difficult to locate them within the SMP jurisdiction (generally within 200 feet of a shoreline). A *new* B&B or vacation rental development within shoreline jurisdiction would be subject to a shoreline substantial development permit, though a *conversion* from an existing residence to one of these uses would likely be exempt from that requirement. However, whether it is a new development or a conversion, the B&B or vacation rental *use* within the SMP jurisdiction would be subject to a shoreline conditional use permit under the current regulations.

And it would likely be difficult to obtain a conditional use permit for a B&B or vacation rentals under current SMP criteria. The SMP currently lists B&Bs among commercial uses in its regulations for the “urban conservancy” and the “conservancy” shoreline designations. Those commercial uses are subject to a shoreline conditional use permit. WCC 23.60.040(B)(1), which lists shoreline conditional use permit criteria, requires that “the proposed use will be consistent with the policy of RCW 90.58.020 and this program.” That RCW section lists criteria in order of preference and gives preference to shoreline protection and public access over other uses.²

Extent of B&B and Vacation Rental Uses

Based on a November 2015 compilation of online listings, staff estimated that about one quarter of the approximately 400 short term rental units then advertised on the VRBO.com and airbnb.com websites in unincorporated Whatcom County were within shoreline jurisdiction (typically 200 feet from ordinary high water mark of an affected waterbody) (Table 2). While these uses are widespread throughout the County, they tend to cluster in areas traditionally characterized by recreational housing, such as Glacier and Birch Bay. Smaller clusters also exist in areas that have not been primarily recreational in nature, such as Lake Whatcom.

A large majority of these short term rental units are vacation rentals (Table 3 and Table 4). At present, conversion of a residence to a vacation rental does not require a permit or registration through PDS. Without such a requirement, there has been no action that would prompt PDS to inform owners within the SMP jurisdiction that a conditional use permit is required.

Table 2. VRBO and Airbnb Listings by Location and Shoreline Designation, November 2015

Location	Shoreline Designation (based on approximate location mapped in online listing)							Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	Outside Shoreline	
Birch Bay				8		11	46	65
Birch Point				1			2	3
Cain Lake				2				2
Chuckanut				7			3	10
Columbia Valley							4	4

² **RCW 90.58.020** “...The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

Location	Shoreline Designation (based on approximate location mapped in online listing)						Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	
Deming	1						1
Drayton Harbor					3		3
E Bellingham							5
Emerald Lake				1			2
Everson							1
Glacier	14						128
Glacier Springs							49
Gooseberry Point				1			2
Lake Samish				3			3
Lake Whatcom			5	11			18
Lummi Island	4		12				11
Maple Falls							4
Marietta							1
North County							3
N Bellingham							3
Point Roberts		1		8		1	10
Sandy Point				8			8
Silver Lake	10						5
Squalicum Lake							2
Van Zandt							1
Welcome	2						2
Total	31	1	17	50	3	12	300

Table 3. VRBO and Airbnb Listings by Location and Type, November 2015

Location	Bed & Breakfast	Vacation Rental	Total
Birch Bay		65	65
Birch Point		3	3
Cain Lake		2	2
Chuckanut	1	9	10
Columbia Valley	1	3	4
Deming		1	1
Drayton Harbor		3	3
E Bellingham	1	4	5
Emerald Lake		3	3
Everson	1		1
Glacier		142	142
Glacier Springs		49	49
Gooseberry Point		3	3
Lake Samish		3	3
Lake Whatcom	3	31	34
Lummi Island		27	27

Location	Bed & Breakfast	Vacation Rental	Total
Maple Falls		4	4
Marietta		1	1
North County		3	3
N Bellingham	2	1	3
Point Roberts		20	20
Sandy Point		8	8
Silver Lake		15	15
Squalicum Lake		2	2
Van Zandt		1	1
Welcome		2	2
Total	9	405	414

Table 4. VRBO and Airbnb Listings by Type and Shoreline Designation, November 2015

Type	Shoreline Designation (based on approximate location mapped in online listing)							Total
	Conservancy	Natural	Rural	Shoreline Residential	Urban Conservancy	Urban Resort	Outside Shoreline	
Bed & Breakfast	0	0	0	1	0	0	8	9
Vacation Rental	31	1	17	49	3	12	292	405
Total	31	1	17	50	3	12	300	414

Status of Amendments

Zoning Code Amendments

The Planning Commission held a December 2014 work session and January 2015 public hearing regarding proposed zoning code amendments to regulate short-term rentals. The Commission recommended approval of the proposal to list B&Bs and vacation rentals as accessory uses in most zones.

The Council P&D Committee has discussed the issue four times since then. Committee discussion focused on permitting vacation rentals as accessory uses per the Planning Commission recommendations, adding a provision making them a conditional use in the Lake Whatcom Watershed, and adding a series of performance standards intended to protect the safety of guests and prevent negative impacts to nearby residents. The proposed amendments shown in Exhibit A are based on the P&D Committee’s latest recommendation, with clarifying amendments proposed by staff since its last review. These are to §20.80.960, trying to better lay out the registration requirements, and amending the definition of “vacation rental unit” to match that of the DOE revised definition in the SMP amendments.

Shoreline Management Program Amendments

The Planning Commission held a public hearing on June 23, 2016, on the SMP amendments and recommended approval.

On October 25, 2016, the County Council held a public hearing and pre-approved the proposed amendments, passing Resolution 2016-039 (attached), forwarding the SMP amendments to the Department of Ecology (DOE) for its review.

On April 3, 2018, the DOE granted condition approval of Resolution 2016-039, providing recommended minor changes to some of the definitions for clarity. These changes have been incorporated into the proposed draft amendments (Exhibit B).

II. PROPOSED AMENDMENTS

Zoning Code Amendments

The proposed code amendments (Exhibit A) would add vacation rentals as an accessory use in UR, URM, URMX, RR, RRI, TZ, RC, STC, AG, and R, subject to a series of standards listed in WCC 20.80, the “supplemental requirements” chapter of the zoning code. These are the zones where “bed and breakfast establishments” are currently permitted as an accessory use (see Table 1). Vacation rentals would also be required to annually register as such with PDS.

The amendment would also add a definition of vacation rentals to distinguish them from long-term rentals. The definition uses 30 days as the vacation rental threshold, which is consistent with the County’s transient occupancy definition (WCC Chapter 3.36 Transient Occupancy Tax) and with the definitions of bed and breakfast establishments and inns. The definition also specifies no food service, to distinguish them from the bed and breakfast uses.

SMP Amendments

The proposed amendments (Exhibit B) would make B&Bs and vacation rental units residential rather than commercial uses in the SMP. This would be consistent with the proposed zoning code amendments, which would allow them as accessory uses to residential uses. Specifically, the amendment would:

- Remove B&Bs from the list of commercial uses subject to shoreline conditional use permits in the Urban Conservancy and Conservancy shoreline designations (WCC 23.30.055 and .095, and 23.100.050(C)(3) and .050(C)(7))
- Add a definition of “bed and breakfast” (WCC 23.110.020(4))
- Exclude B&Bs and vacation rental units from the definition of “commercial development” (WCC 23.110.030(6))
- Add B&Bs and vacation rental units to the definition of “residential development” (WCC 23.110.180(7)), and
- Add a definition of “vacation rental unit” (WCC 23.110.220(1))

The added definitions of B&B and vacation rental unit are consistent with those proposed in the Title 20 (zoning code) amendments. If enacted, the proposed zoning code amendments coupled with these amendments to the SMP would allow for a use that is already becoming a significant non-urban economic activity in the county, while placing performance standards on these uses to prevent negative impacts to surrounding residents.

III. COMPREHENSIVE PLAN EVALUATION

Zoning Code Amendments

The proposed zoning code amendment to add a definition and standards for vacation rental uses is consistent with the following policies of the Whatcom County Comprehensive Plan:

Goal 2A: Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.

Policy 2A-13 Allow for adequate economic development to provide economic sustainability, adequate employment opportunities, and services in and for the rural areas.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations ...

Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

Policy 2FF-3: Ensure that business operations do not adversely impact adjacent residential, agricultural or forest land, or compromise water quality and quantity.

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.

Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.

Policy 7K-4: Consider establishing more resource and tourism based recreational, commercial, and industrial uses to create economic opportunity in the rural areas of the county.

Shoreline Management Program Amendments

The proposed SMP amendment, in conjunction with the proposed zoning code amendments, is consistent with the following policies of the Whatcom County Comprehensive Plan:

Goal 2A: Ensure provision of sufficient land and densities to accommodate the growth needs of Whatcom County and protect the qualities that make the county a desirable place to live.

Policy 2A-13 Allow for adequate economic development to provide economic sustainability, adequate employment opportunities, and services in and for the rural areas.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations ...

Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

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.

Goal 7K: Enable a geographic balance for economic growth within the capacities of the county's natural resources, natural systems, public services, and public facilities.

Policy 7K-4: Consider establishing more resource and tourism based recreational, commercial, and industrial uses to create economic opportunity in the rural areas of the county.

IV. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

Staff recommends the Council adopt the following findings of fact and reasons for action:

PLN2014-00020 (Title 20 Zoning Code Amendments)

1. Whatcom County Planning and Development Services submitted an application for a zoning code amendment to add a definition and standards for vacation rental units.
2. The amendment would add vacation rentals as an accessory use in zones where “bed and breakfast establishments” are currently permitted as an accessory use.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 1, 2014.
4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on November 26, 2014.
5. On January 8, 2015, the Whatcom County Planning Commission held a duly noticed public hearing on a proposal to amend the Zoning Code (WCC Title 20) to allow vacation rental units as accessory uses in most zones, and recommended approval.
6. On _____, 2018, the Whatcom County Council held a duly noticed public hearing on the proposed amendments.
7. WCCP Policies 2A-13, 2FF-1, 2FF-3, 2FF-4, and 7K-4 support small home-based businesses in the rural areas of the county.
8. WCCP Policies 2FF-3 and 2FF-4 support rural businesses provided they do not adversely impact rural character or surrounding uses.
9. WCCP Policy 2DD-2 supports protecting rural character through development regulations.

PLN2016-00011 (Title 23 Shoreline Master Program Amendments)

10. Whatcom County Planning and Development Services submitted an application for a SMP code amendment to define B&Bs and vacation rental units as residential uses.
11. PDS estimates that about a quarter of vacation rental and bed and breakfast uses offered on two of the most popular vacation rental websites is located within the Shoreline Master Program jurisdiction.
12. The amendment would list vacation rental and bed and breakfast uses as residential uses in the Shoreline Master Program, consistent with the proposed zoning code amendments.
13. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 27, 2016.
14. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 28, 2016.
15. The Planning Commission held a public hearing on the proposed amendments on June 23, 2016, notice of which was published in the Bellingham Herald on June 10, 2016.

16. The County Council held a duly noticed public hearing on the amendments on October 25, 2016, and passed Resolution 2016-039, directing staff to forward the SMP amendments to the Department of Ecology for its review.
17. Pursuant to WAC 173-26-110 and Resolution No. 2016-039, the staff forwarded the proposed SMP amendments to the Washington State Department of Ecology for review as a limited master program amendment.
18. On April 3, 2018, the Department of Ecology granted conditional approval of the proposed amendments, requesting some minor definitional changes that have been incorporated into the proposal.
19. WCCP Policies 2A-13, 2FF-1, 2FF-4, and 7K-4 support economic sustainability in the rural areas of the County.
20. WCCP Policy 2FF-4 supports rural 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.

V. PROPOSED CONCLUSIONS

1. The zoning amendments defining vacation rental units and regulating their operation is in the public interest.
2. The Shoreline Master Program amendments regarding vacation rental units and bed and breakfasts in the shoreline jurisdiction is in the public interest.
3. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. RECOMMENDATION

Planning and Development Services recommends that the Council P&D Committee review the proposed code amendments and provide direction to staff. If the P&D Committee chooses to schedule the ordinance before the whole Council for action, staff will schedule it for introduction and a public hearing.

ATTACHMENTS

- Draft Ordinance No. ____
- Exhibit A – Proposed Title 20 (Zoning) amendments
- Exhibit B – Proposed Title 23 (Shoreline Master Program) amendments
- Resolution 2016-039



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-077

File ID: AB2019-077 **Version:** 1 **Status:** Agenda Ready
File Created: 01/14/2019 **Entered by:** MAamot@co.whatcom.wa.us
Department: Planning and Development Services Department **File Type:** Discussion

First Assigned to: Council Planning and Development Committee

Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Discussion with Planning and Development Services about potential zoning code amendments relating to the density credit program; discussion to include which amendments should be docketed for further review

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The County Council adopted a policy in the 2016 Comprehensive Plan update that included convening a work group to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues. In accordance with this policy, the County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The Work Group's Final Report was issued on October 3, 2018. The Work Group's primary recommendation is to transition from a traditional TDR program to a density credit program. Staff would like to discuss potential zoning code amendments relating to density credits, including which amendments should be docketed for further review.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
01/29/2019	Council Planning and Development Committee	HELD IN COMMITTEE	Council Planning and Development Committee

Attachments: Memo to Council (Jan 14, 2019), Attachment to Memo (Jan 14, 2019), Presentation: Density Credit for Docketing (Jan 29, 2019)

Final Action:
Enactment Date:
Enactment #:



Memorandum

January 14, 2019

TO: The Honorable Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Director *MP*

RE: Density Credit Program – Potential Zoning Code Amendments

The Whatcom County Council adopted a policy in the 2016 Comprehensive Plan update that included convening a multi-stakeholder work group to examine a variety of transfer of development right (TDR) and purchase of development right (PDR) issues.

In accordance with this policy, the County Executive appointed the Whatcom County TDR/PDR Multi-Stakeholder Work Group in February 2017. The Work Group met a total of 15 times between March 2017 and October 2018. The *Whatcom County TDR/PDR Multi-Stakeholder Work Group Final Report* (October 3, 2018) was e-mailed to the Executive and County Council on October 10, 2018.

The primary recommendation of the TDR/PDR Work Group is to transition from a traditional TDR program, which has not worked well in the past, to a density credit program. In a density credit program, a developer voluntarily makes a cash payment (instead of purchasing TDRs) to access development incentives such as density bonuses. Any cash raised through this program would provide supplemental funding to the County's PDR program to help protect agricultural and rural areas. The density credit model is a simple and efficient tool that could allow increased development in cities, UGAs, and other designated areas while providing additional funding for purchasing development rights in agricultural and rural areas and, potentially, for city amenities.

The County Council forwarded Comprehensive Plan amendments relating to density credits, recommended by the Work Group, to concurrent review on November 7, 2018. We would now like to discuss potential zoning code amendments relating to density credits.

Preliminarily, it should be noted that the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA in November 2017 (Ordinance 2017-062). This program allows higher density single family residential development in the Resort Commercial zone in the Birch Bay UGA, through the planned unit development permit process, if density credits are purchased. The County Council adopted a \$4,000 density credit fee for each additional dwelling unit in December 2017 (Ordinance 2017-072).

The TDR/PDR Multi-Stakeholder Work Group's Final report includes several recommendations for consideration:

- Expand the density credit program to the Urban Residential zoning district in the Birch Bay Urban Growth Area (p. 33).
- Expand the density credit program to allow an increase in the size of accessory dwelling units (p. 34).
- Expand the density credit program to, in certain areas, allow elimination of the requirement that the land owner must live on the site when an accessory dwelling is constructed (pp. 34-36).
- Expand the density credit program to allow higher density in certain areas within the Rural one dwelling/five acre (R5A) zone (p. 36).

Additionally, the Work Group's Final Report includes a concept of transferring density between R5A parcels, although the Work Group did not formally recommend this concept (p. 48).

Staff would like to discuss these items with Council Committee on January 29 so it can be determined which zoning amendments should be docketed for further review. Thank you for your consideration of this matter. We look forward to discussing it with you.

Whatcom County TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

- Portion of TDR Sale Money – King County provides Sammamish with a percentage of the revenue from TDR sales by the TDR bank.
- Tax Revenue Sharing – King County shares property tax money with Seattle through the Landscape Conservation and Local Infrastructure Program (LCLIP), which is applicable to King, Pierce, and Snohomish Counties.

Identifying a benefit to city residents (or providing amenity funds) would be an important component of partnering with cities to develop a density credit program. In a density credit program, revenue generated from purchases of development incentives could be shared by the County and city, providing a simple method for cities to also benefit from the program.

If the cities were to participate in the density credit program, they would have to formulate incentives to make it attractive for developers to utilize the program. Cities have indicated that residential development is generally occurring at or below current zoned densities, so other incentives may be needed to entice developers to use a density credit program. City zoning code changes would be needed to implement such a program.

Opportunity # 4 - Density Credit Program: Density Bonus Areas in UGAs

As previously discussed, Whatcom County has designated TDR receiving areas in the Bellingham UGA and the Birch Bay UGA. The Bellingham UGA essentially does not function as a TDR receiving area because the City generally does not extend public water and sewer to the UGA anymore. Therefore, urban development does not occur until annexation. The Birch Bay UGA has one TDR receiving area, but no development rights have been transferred to this area yet.

The TDR/PDR Work Group recommends focusing on a density credit program, rather than on a traditional TDR program. This simplified approach would provide additional developer incentives for areas in the UGA when density credits are purchased. In November 2017, the County Council adopted a density credit program for the Resort Commercial zone in the Birch Bay UGA and should consider expanding this program to other areas in the UGA. Specifically, the lower density Urban Residential four dwellings/acre (and possibly Urban Residential Medium Density six dwellings/acre) zones in the Birch Bay UGA should be considered for increased density through the proposed density credit program.

The Columbia Valley UGA, in the eastern part of the County, could also be designated as a receiving area. In fact, the Foothills Subarea Plan contains an implementation task to:

Revise the Official Whatcom County Zoning Ordinance to designate Rural and Rural Forestry areas in the Foothills Subarea as transfer of development rights (TDR) sending areas and the Columbia Valley UGA or other urban growth areas as TDR receiving areas in order to preserve open space in rural and forestry areas (p. 15-7).

However, increasing densities in the Columbia Valley UGA should be carefully considered in light of the long drive to major employment centers, medical facilities, social services, and shopping areas.

Opportunity # 5 – Density Credit Program: Accessory Dwelling Units (ADU)

King County allows TDRs from sending areas to rural receiving areas to increase the size of accessory dwelling units from 1,000 to 1,500 square feet (King County Code 21A.08.030).

The King County TDR Program Manager indicated that they have had some TDR transfers to rural areas, but that the majority of transfers have been into urban areas such as Seattle.

The Whatcom County Zoning Code currently allows accessory dwelling units, subject to a variety of conditions, in the following zones:

- Urban Residential (WCC 20.20.132);
- Urban Residential Medium Density (WCC 20.22.132);
- Urban Residential Mixed (WCC 20.24.133);
- Residential Rural (WCC 20.32.132);
- Rural Residential – Island, which is applicable to Lummi Island (WCC 20.34.132);
- Rural (WCC 20.36.132);
- Point Roberts Transitional District (WCC 20.37.132);
- Small Town Commercial (WCC 20.61.153); and
- Resort Commercial (WCC 20.64.132).

ADU Incentive 1 - Accessory dwelling units are currently limited to 1,248 square feet in these zoning districts. The TDR/PDR Work Group recommends increasing the size limit by 500 square feet to a maximum of 1,748 square feet if density credits are purchased. It is recommended that the price should be \$8/square foot up to the 500 square foot maximum. The Work Group recommends that this rural incentive should be available anywhere that accessory dwelling units are allowed in the County.

ADU Incentive 2 - Additionally, the TDR/PDR Work Group recommends allowing an investor to pay to retire one full development right in a rural or agricultural area in exchange for eliminating the following requirement, which is normally imposed on accessory dwelling units:

The owner(s) of the single-family lot upon which the accessory apartment or detached accessory dwelling unit is located shall occupy as their primary domicile at least one of the dwelling units on that lot.

This would allow an investor (who retires one full development right) to rent out both the main house and the accessory dwelling unit on the property, as the owner would not have to live on the site.

ADU Incentive 2 can be utilized, anywhere accessory dwelling units are allowed, in the areas shown below:

Rural Areas - In rural areas (outside UGAs) the parcel would have to be:

- a. Outside of Rural Study Areas (areas zoned R5A and R10A that are valuable for agriculture);
- b. Covered by less than 50% Agriculture Protection Overlay Soils;
- c. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- d. Outside the 100 year floodplain;
- e. Outside shoreline jurisdiction;
- f. Outside an alluvial fan;
- g. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- h. More than 1 mile from the runway of the Bellingham International Airport;
- i. Outside UGA Reserves;
- j. More than 1 mile from the boundary of a city;
- k. More than 1 mile from the boundary of a UGA;
- l. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

UGA - In UGAs, the parcel would have to be:

- a. Outside the Lake Whatcom, Lake Padden, and Lake Samish watersheds;
- b. Outside the 100 year floodplain;
- c. Outside shoreline jurisdiction;

- d. Outside an alluvial fan;
- e. Outside of and more than 1,000' from a Mineral Resource Lands designation;
- f. More than 1 mile from the runway of the Bellingham International Airport;
- g. Within a Group A or Group B Public Water System Service Area, excluding:
 - o Group A Systems currently exceeding Water Right Limits;
 - o Group A Systems projected to exceed water right limits at full build-out; and
 - o Group A Systems with no data on system water rights or use.

The Work Group recommends that more than one incentive may be used per parcel.

Opportunity # 6 - Density Credit Program: Rural Areas

King County allows TDRs from sending areas to rural receiving areas to increase the density in the "RA-2.5" zone from 0.2 dwellings/acre to 0.4 dwellings/acre (King County Code 21A.12.030). This is equivalent to going from one dwelling/five acres to one dwelling/2.5 acres.

Rural Incentive 1 - The TDR/PDR Work Group recommends allowing a density of one dwelling/2.5 acres in the Rural one dwelling/five acre (R5A) zone if the proposed density credit program is used. This proposal targets density bonus areas, which could be developed at a density of one dwelling/2.5 acres, that have access to an existing public water system. In return for the extra density, cash would be contributed to the County's PDR program through the purchase of density credits. One development right would have to be retired in a rural or agriculture area for every new lot allowed so that there would be no net increase in development potential. Additionally, this concept should be considered with a degree of caution, as it may come as a surprise to rural land owners who purchased property in the R5A zone expecting surrounding land uses to develop at a maximum density of one dwelling/five acres. Critical area regulations could also make development at a density of one dwelling/2.5 acres more challenging in some areas. To utilize Rural Incentive 1, the parcel would have to be in the R5A zone and meet the same criteria as ADU Incentive 2 for Rural areas (be outside of Rural Study Areas, covered by less than 50% Agriculture Protection Overlay Soils, etc.).

Opportunity # 7 - Simplifying the TDR Program

The existing TDR program is cumbersome and not used very often. Additionally, the density credit model provides an attractive alternative to a traditional TDR program. Therefore, the existing TDR program should be refined, but the County should not put major effort into reforming the program.

Whatcom County has direct control over land use regulation, including densities, in unincorporated areas such as the Birch Bay UGA and rural lands. The County should consider expanding the density credit program in the Birch Bay UGA and, in limited circumstances, utilizing the density credit program in rural areas (See *Section 6 Opportunities/Alternatives to a Workable TDR Program*).

TDR Program: Sending and Receiving Areas

As mentioned, the Work Group recommends focusing on the density credit model, rather than traditional TDR sending and receiving areas. However, using the traditional TDR program, an opportunity may exist to allow the owners of separate non-contiguous parcels to transfer density from one parcel to the other. This would encourage protection of higher quality agricultural soils and critical areas without an overall increase in the number of dwellings allowed in the rural area.

For example, if a land owner has two separate 20 acre parcels both zoned R5A, the owners would typically be allowed to divide the land and build four homes on each parcel under standard zoning rules. Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints). The end result would be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.

This concept could be utilized to transfer density from one part of the rural area to another part of the rural area. The receiving parcel would be developed as a cluster subdivision.

This concept should not be allowed to increase density in any of the following:

- Lake Whatcom Watershed;
- UGAs and UGA Reserves;
- Lummi Island;
- Agriculture zone;
- Rural Forestry zone;
- Commercial Forestry zone;
- Mineral Resource Lands Overlay.

The Work Group is not formally recommending that this concept be implemented, but has included it in the report to allow the concept to receive further consideration prior to a formal proposal. Any such proposal in rural areas would have to be carefully reviewed under the Growth Management Act and Whatcom County Comprehensive Plan to ensure that rural character is preserved in these areas.

**Summary of
Whatcom County TDR/PDR
Multi-Stakeholder Work Group Final Report
Density Credit Program
Potential Code Amendments**

Whatcom County Planning and Development Services
Presentation at County Council's Planning and Development Committee
January 29, 2019

- I. Background Information**
- II. Work Group Recommendations**
- III. Potential Docket Items**

I. Background Information



TDR / PDR Work Group

Ralph Black	TDR User (Chair)
Jori Burnett	City of Ferndale (Vice-Chair)
Chris Behee	City of Bellingham
Michael Jones	City of Blaine
Rollin Harper	Cities of Everson, Nooksack, and Sumas
Dave Timmer	City of Lynden
Bill Henshaw	Building Industry
Betty Sanchez	Realtors
Myrle Foster	Rural Property owner
Phil Thompson	Economist
Steve Powers	Affordable housing
Rod Erickson	Agriculture
Karlee Deatherage	Environmental
Rud Browne	County Council Member

II. Work Group Recommendations

Whatcom County TDR/PDR Multi-Stakeholder Work Group

Final Report

October 3, 2018

A. Voluntary Density Credit Program

- More emphasis on Density Credit Model
- Less emphasis on TDRs

What is a Density Credit Program?

- Voluntary – Developers may choose to develop under current zoning **or** purchase density credits.
- Incentives – Developers can access incentives such as increased density in designated areas.
- Ag Preservation – Any funding raised through the density credit program will go into the existing PDR program.

Density Credit - Advantages

- Developers know the cost up front;
- Developers do not have to find and negotiate with a willing TDR seller(s);
- Local government can use the cash on their highest preservation priorities;
- The cash can be utilized in an existing PDR program; and
- Simplifies administration of the program.

Birch Bay Example (2017)



Potentially Expanding the Density Credit Program

- Small Cities
- Birch Bay UGA
- Accessory Dwelling Units (ADUs)
- Rural Areas

B. Comprehensive Plan Amendments

Whatcom County Comprehensive Plan

Adopted August 9, 2016
Whatcom County Planning and Development Services



© 2016 Mark Turner



Density Credit Program Focus



C. Voluntary TDR Program

- Keep existing, *voluntary* TDR Program
- But emphasize Density Credit Program over TDRs in the future

Keep TDR Program



D. Mandatory TDR Program

- Do not keep existing, *mandatory* TDR Program

E. TDR Bank

- Not Recommended

F. New PDR Fund

- Create new PDR fund if significant new funding sources become available

III. Potential Docket Items



To Docket or Not to Docket?

271

Density Credit Program

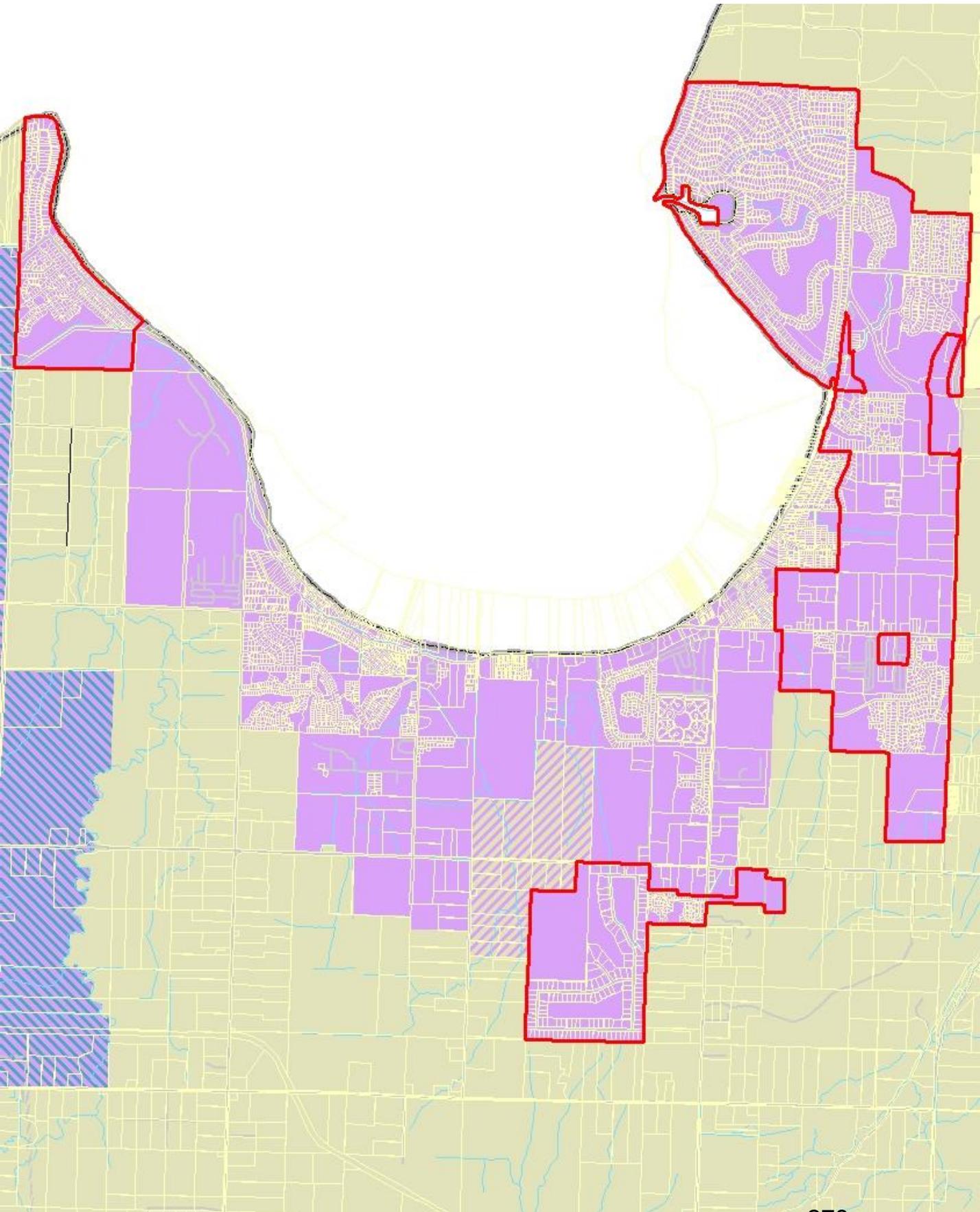
- Birch Bay UGA / UR4 Zone
- ADUs – Size limits
- ADUs – Occupancy requirements
- Rural areas

TDR Program

- Rural Areas

Density Credit Program: Birch Bay UGA

- **Urban Residential 4
dwellings/acre (UR4) zone**



Density Credit Program: ADUs

- Size Limits
- Owner Occupancy Requirement

ADU – Size Limits

- Current Size Limit is 1,248 s.f.
- Work Group Recommendation:
1,748 s.f. with density credits

ADU – Owner Occupancy Requirement

- Current Code: Owner must live in either the house or ADU
- Work Group Recommendation: Owner would not need to live there if density credits purchased

Density Credit Program: Rural Areas

- Current R5A zone:
One dwelling/five acres
- Work Group Recommendation for R5A zone:
One dwelling/2.5 acres if density credits purchased (and public water available)

TDRs: Rural Areas

- Current R5A zone:
 - Can't transfer development rights between R5A parcels.
- Work Group Report includes:
 - Considering a proposal to allow transfer of development rights between R5A parcels (although no formal recommendation)

TDRs: Rural Area Example

279

Two separate 20 acre parcels both zoned R5A.

- The owners would typically be allowed to divide the land and build four homes on each parcel.
- Under this approach, the density could be transferred from one of the parcels (e.g. that has development constraints or high quality agricultural soils) to the other parcel (which does not have as many constraints).
- The end result could be zero development capacity on one of the 20 acre parcels and eight dwellings on the other 20 acre parcel.



Comp Plan

Rural Element

Policy 2MM-1

Areas zoned for densities greater than one dwelling per five acres shall be contained within Rural Neighborhood boundaries.

Rural Neighborhood boundaries shall not be expanded beyond those established in 2012, which were drawn to include areas that were developed at higher rural densities in 2011.

To Docket or Not to Docket?

Density Credit Program

- **Birch Bay UGA / UR4 Zone**
- **ADUs – Size limits**
- **ADUs – Occupancy requirements**
- **Rural areas**

TDR Program

- **Rural Areas**



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2019-017

File ID: MIN2019-017 Version: 1 Status: Agenda Ready
 File Created: 02/12/2019 Entered by: JNixon@co.whatcom.wa.us
 Department: Council Office File Type: Minutes Consent
 First Assigned to: Council
 Agenda Date: 02/26/2019 Next Mtg. Date: Hearing Date:

TITLE FOR AGENDA ITEM:

Committee of the Whole for February 12, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

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

Attachments: Committee of the Whole for February 12, 2019.pdf

Final Action:
Enactment Date:
Enactment #:

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

WHATCOM COUNTY COUNCIL
Committee Of The Whole

February 12, 2019

CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 12:12 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Carol Frazey, Tyler Byrd (via telephone), and Satpal Sidhu

Absent: None

COMMITTEE DISCUSSION

1. AB2019-095 DISCUSSION WITH CHIEF CIVIL DEPUTY PROSECUTOR KAREN FRAKES REGARDING A PROPOSED ORDINANCE AMENDING WHATCOM COUNTY CODE 24.11, DRINKING WATER

Attorney Present: Karen Frakes and Royce Cunningham

Browne stated that discussion of agenda item one may take place in executive session pursuant to RCW 42.30.110 (1)(i). Executive session will conclude no later than 7:00 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Brenner moved to go into executive session until no later than 7:00 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Byrd, Donovan, Frazey, and Sidhu (7)

Nays: None (0)

OTHER BUSINESS

ADJOURN

The meeting adjourned at 1:15 p.m.

The Council approved these minutes on _____ 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1
2
3
4
5
6
7
8
9

Dana Brown-Davis, Council Clerk

Rud Browne, Council Chair

Jill Nixon, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2019-018

File ID:	MIN2019-018	Version:	1	Status:	Agenda Ready
File Created:	02/15/2019	Entered by:	JNixon@co.whatcom.wa.us		
Department:	Council Office	File Type:	Minutes Consent		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	

TITLE FOR AGENDA ITEM:

Regular County Council for February 12, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

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

Attachments: County Council for February 12, 2019.pdf

Final Action:
Enactment Date:
Enactment #:

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 WHATCOM COUNTY COUNCIL
2 Regular County Council Meeting
3

4 February 12, 2019
5

6 CALL TO ORDER
7

8 Council Chair Rud Browne called the meeting to order at 7:00 p.m. in the Council
9 Chambers, 311 Grand Avenue, Bellingham, Washington.
10

11
12 ROLL CALL
13

14 Present: Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Carol
15 Frazey, and Satpal Sidhu.
16 Absent: Tyler Byrd.
17

18
19 FLAG SALUTE
20

21
22 ANNOUNCEMENTS
23

24 ***Brenner moved*** to hold everything on the agenda for two weeks, except the public
25 hearings and the resolution requesting that the County Executive provide staff
26 resources and funding to coordinate with Whatcom County cities, social service
27 agencies, and other providers to provide sufficient shelter capacity during cold
28 weather periods and coordinate issuing hotel/motel accommodation vouchers
29 (AB2019-138).
30

31 Councilmembers discussed holding meetings during inclement weather.
32

33 The motion was seconded.
34

35 The motion failed by the following vote:

36 Ayes: Brenner(1)
37 Nays: Browne, Buchanan, Donovan, Frazey, and Sidhu (5)
38 Absent: Byrd (1)
39

40
41 MINUTES CONSENT
42

43 ***Brenner moved*** to approve Minutes Consent items one through ten, including the
44 scrivener's corrections to items one and six.
45

46 The motion was seconded.
47

48 The motion carried by the following vote:

49 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)
50 Nays: None (0)

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 Absent: Byrd (1)

- 2
3 1. MIN2019-007 COMMITTEE OF THE WHOLE FOR JANUARY 15, 2019
4
5 2. MIN2019-008 SPECIAL COMMITTEE OF THE WHOLE (3PM) FOR JANUARY
6 15, 2019
7
8 3. MIN2019-009 SPECIAL COMMITTEE OF THE WHOLE (6:30PM) FOR JANUARY
9 15, 2019
10
11 4. MIN2019-010 REGULAR COUNTY COUNCIL FOR JANUARY 15, 2019
12
13 5. MIN2019-011 REGULAR COUNTY COUNCIL FOR JANUARY 29, 2019
14
15 6. MIN2019-012 SURFACE WATER WORK SESSION FOR JANUARY 22, 2019
16
17 7. MIN2019-013 SPECIAL COMMITTEE OF THE WHOLE FOR JANUARY 29, 2019
18
19 8. MIN2019-014 COMMITTEE OF THE WHOLE FOR JANUARY 29, 2019
20
21 9. MIN2019-015 SPECIAL COMMITTEE OF THE WHOLE FOR JANUARY 8, 2019
22
23 10. MIN2019-016 BOARD OF HEALTH FOR FEBRUARY 5, 2019
24

25
26 **PUBLIC HEARINGS**

- 27
28 1. AB2019-018 ORDINANCE ADOPTING VARIOUS MINOR AMENDMENTS TO
29 WHATCOM COUNTY CODE TITLES 20 (ZONING), 21 (LAND DIVISION
30 REGULATIONS), AND 22 (LAND USE AND DEVELOPMENT PROCEDURES),
31 MAKING CORRECTIONS, UPDATES, AND CLARIFICATIONS
32

33 Browne opened the public hearing, and hearing no one, closed the public hearing.
34

35 ***Brenner moved*** to adopt the ordinance with substitute for Exhibit A.
36

37 The motion was seconded.
38

39 The motion carried by the following vote:

40 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

41 Nays: None (0)

42 Absent: Byrd (1)
43

- 44 2. AB2019-073 ORDINANCE REGARDING TEMPORARY INSTALLATION OF STOP
45 SIGNS ON CERTAIN COUNTY ROADS
46

47 Browne opened the public hearing, and hearing no one, closed the public hearing.
48

49 ***Brenner moved*** to adopt the ordinance.
50

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 The motion was seconded.

2
3 The motion carried by the following vote:

4 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

5 Nays: None (0)

6 Absent: Byrd (1)

7
8 3. AB2019-074 ORDINANCE ESTABLISHING A TEMPORARY SPEED LIMIT
9 CHANGE FOR BIRCH BAY DRIVE

10
11 Browne opened the public hearing, and hearing no one, closed the public hearing.

12
13 ***Brenner moved*** to adopt the ordinance.

14
15 The motion was seconded.

16
17 The motion carried by the following vote:

18 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

19 Nays: None (0)

20 Absent: Byrd (1)

21
22 4. AB2019-075 ORDINANCE ESTABLISHING TEMPORARY ONE-WAY TRAFFIC
23 ON BIRCH BAY DRIVE

24
25 Browne opened the public hearing, and hearing no one, closed the public hearing.

26
27 ***Brenner moved*** to adopt the ordinance.

28
29 The motion was seconded.

30
31 The motion carried by the following vote:

32 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

33 Nays: None (0)

34 Absent: Byrd (1)

35
36 5. AB2019-076 ORDINANCE AUTHORIZING THE TEMPORARY RE-OPENING OF
37 COTTONWOOD DRIVE AT MORGAN DRIVE TO VEHICULAR TRAFFIC

38
39 Browne opened the public hearing, and the following people spoke:

40
41 Anna Ferraro submitted handouts and stated she is opposed to the reopening of
42 Cottonwood Drive for safety issues.

43
44 Al Ferraro stated he is opposed to reopening Cottonwood Drive for safety issues.

45
46 Hearing no one else, Browne closed the public hearing.

47
48 Joe Rutan, Public Works Department, gave a staff report and answered questions
49 about why the road was closed originally, whether the road is still unsafe, and setting a
50 deadline for closing the road.

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1
2 **Sidhu moved** to amend the ordinance to set a 90-day deadline for the closure of
3 Cottonwood Drive.

4
5 **Browne suggested a friendly amendment** to set the deadline to May 31, 2019.

6
7 **Sidhu accepted** the friendly amendment.

8
9 The motion to amend was seconded.

10
11 The motion carried by the following vote:

12 Ayes: Browne, Buchanan, Frazey, and Sidhu (4)

13 Nays: Brenner and Donovan (2)

14 Absent: Byrd (1)

15
16 **Sidhu moved** to adopt the ordinance as amended.

17
18 The motion was seconded.

19
20 The motion to adopt as amended failed by the following vote:

21 Ayes: Browne, Buchanan, and Sidhu (3)

22 Nays: Frazey, Brenner, and Donovan (3)

23 Absent: Byrd (1)

24
25
26 **OPEN SESSION**

27
28 The following people spoke about homeless shelter issues during inclement
29 weather:

- 30
 - Dana Briggs
 - Amy Glasser
 - Eddy Ury
 - Krista Rome
 - Jennifer Mansfield submitted handouts
 - Trevor Smith
 - Eleanor Hines

31
32
33
34
35
36
37
38 The following person spoke about other issues:

- 39
 - Eleanor Hines, ReSources for Sustainable Connections, spoke about a
40 resolution protecting the local Orca population.

41
42 The following staff answered questions:

- 43
 - Tyler Schroeder, Executive's Office
 - Karen Frakes, Prosecutor's Office

44
45
46 Councilmembers and staff discussed existing efforts being made by local agencies to
47 house the homeless during inclement weather, gaps in service, potential solutions to house
48 everyone, County facilities that may be opened for shelter, the role of the Health
49 Department, and purchasing procedures.

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 **Brenner moved** to open the courthouse to unhoused individuals who need to get
2 out of the weather until the crisis weather dissipates.

3
4 The motion was seconded.

5
6 Councilmembers continued to discuss potential solutions to house everyone and
7 County facilities that may be opened for shelter.

8
9 **Browne suggested a friendly amendment** to open the Garden Room of the Civic
10 Center Building instead of the Courthouse.

11
12 **Brenner accepted** the friendly amendment and restated the motion to open the
13 Garden Room of the Civic Center Building tonight.

14
15 **Brenner withdrew** her motion from the table in lieu of adding it to the proposed
16 resolution.

17
18 *(See next discussion of Other Items 17 for continued discussion of the motion.)*

19
20
21 **OTHER ITEMS**

22
23 17. AB2019-138 RESOLUTION REQUESTING THAT THE COUNTY EXECUTIVE
24 PROVIDE STAFF RESOURCES AND FUNDING TO COORDINATE WITH
25 WHATCOM COUNTY CITIES, SOCIAL SERVICES AGENCIES, AND OTHER
26 PROVIDERS TO PROVIDE SUFFICIENT SHELTER CAPACITY DURING COLD
27 WEATHER PERIODS AND COORDINATE ISSUING HOTEL/MOTEL
28 ACCOMMODATION VOUCHERS

29
30 Sidhu moved to amend line 30, that the County should open the Garden Room of the
31 Civic Center Building as soon as possible to accommodate homeless people during the
32 inclement weather, including overflow from current shelters. The motion was not seconded.

33
34 Brenner moved to open the Garden Room immediately to accept overflow of
35 homeless people. The motion was not seconded.

36
37 Tyler Schroeder, Executive's Office, answered questions.

38
39 Jim Peterson, HomesNow President, spoke about services provided by HomesNow
40 and answered questions.

41
42 Councilmembers and staff discussed capacity at the various existing shelters in the
43 community, the best process for housing people tonight, and being specific about the
44 individuals not served by the existing shelters.

45
46 **Brenner moved** to amend to add additional language, "Therefore be it resolved,
47 that the Council respectfully requests the County Executive to include the Civic Center
48 Garden Room or another appropriate location downtown in the severe weather shelter
49 inventory, ideally to be staffed by volunteers or as contracted by the County as needed."
50

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 The motion to amend was seconded.

2
3 The motion to amend carried by the following vote:

4 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

5 Nays: None (0)

6 Absent: Byrd (1)

7
8 ***Sidhu moved*** to approve the resolution as amended.

9
10 The motion was seconded.

11
12 Councilmembers and staff continued to discuss best options for sheltering individuals
13 and expanding the voucher program.

14
15 ***Buchanan moved*** to amend to add additional language, "Be it further resolved that
16 the County Council respectfully requests the County Executive to expand the existing
17 hotel/motel voucher program currently in effect by the County."

18
19 The motion to amend was seconded.

20
21 The motion to amend carried by the following vote:

22 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

23 Nays: None (0)

24 Absent: Byrd (1)

25
26 The motion to approve the resolution as amended carried by the following vote:

27 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

28 Nays: None (0)

29 Absent: Byrd (1)

30
31
32 **CONSENT AGENDA**

33
34 ***Sidhu*** reported for the Finance and Administrative Services Committee and ***moved***
35 to approve Consent Agenda items one through seven and nine. Item eight is withdrawn
36 from the agenda.

37
38 The motion carried by the following vote:

39 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

40 Nays: None (0)

41 Absent: Byrd (1)

- 42
43 1. AB2019-026 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
44 ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND BIRCH BAY
45 CHAMBER OF COMMERCE TO PAY FOR THE OPERATIONS OF THE BIRCH BAY
46 VISITOR CENTER AND TO SUPPORT THE MARKETING OF MULTI-DAY
47 EVENTS, IN THE AMOUNT OF \$100,000
48
49 2. AB2019-104 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
50 ENTER INTO AMENDMENT NO. 3 TO WHATCOM COUNTY CONTRACT NO.

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

- 1 201802006 BETWEEN WHATCOM COUNTY AND FCS GROUP FOR THE
2 AMENDED AMOUNT OF \$34,560
3
- 4 3. AB2019-111 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
5 ENTER INTO AN INTERLOCAL BETWEEN WHATCOM COUNTY AND LUMMI
6 NATION TO CONDUCT NATURAL RESOURCE MONITORING AND IMPACT
7 MITIGATION IN THE AMOUNT OF \$120,000
8
- 9 4. AB2019-112 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
10 ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND HERRERA
11 ENVIRONMENTAL CONSULTANTS FOR SWIFT CREEK SEDIMENT
12 MANAGEMENT ACTION PLAN IMPLEMENTATION
13
- 14 5. AB2019-116 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
15 ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY
16 AND WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH & FAMILIES
17 FOR SUPPORT OF PERINATAL MOOD AND ANXIETY DISORDERS, IN THE
18 AMOUNT OF \$10,000
19
- 20 6. AB2019-117 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
21 ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY
22 AND NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION TO SUPPORT
23 SUBSTANCE ABUSE PREVENTION AND MENTAL HEALTH PROMOTION
24 PROGRAMS IN WHATCOM COUNTY, IN THE AMOUNT OF \$83,438
25
- 26 7. AB2019-119 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
27 ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY AND WHATCOM
28 CONSERVATION DISTRICT TO PROVIDE A ROBUST COMMUNITY WILDFIRE
29 RISK REDUCTION PROGRAM THAT CONSISTS OF OUTREACH, EDUCATION
30 AND TECHNICAL ASSISTANCE TO THE WHATCOM COUNTY COMMUNITIES
31 MOST AT RISK FROM WILDFIRE IN WHATCOM COUNTY
32
- 33 8. AB2019-123 RESOLUTION IN THE MATTER OF THE SALE OF SURPLUS
34 PERSONAL PROPERTY AND SETTING A DATE FOR PUBLIC HEARING
35 THEREON PURSUANT TO WCC 1.10
36
- 37 9. AB2019-125 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
38 ENTER INTO AN INTERLOCAL BETWEEN WHATCOM COUNTY AND
39 BELLINGHAM TECHNICAL COLLEGE AND THE CITY OF BELLINGHAM FOR THE
40 ADMINISTRATION OF THE EMT-PARAMEDIC TRAINING PROGRAM IN THE
41 AMOUNT OF \$56,000
42

43
44 OTHER ITEMS
45

- 46 10. AB2019-087 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
47 ENTER INTO AN EDI INTERLOCAL LOAN AND GRANT AGREEMENT BETWEEN
48 WHATCOM COUNTY AND PORT OF BELLINGHAM IN THE AMOUNT OF
49 \$250,000
50

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 **Sidhu** reported for the Finance and Administrative Services Committee and **moved**
2 to approve the request.

3
4 The motion carried by the following vote:

5 Ayes: Brenner, Browne, Donovan, Frazey, and Sidhu (5)

6 Nays: None (0)

7 Absent: Byrd (1)

8 Abstains: Donovan (1)

9
10 11. AB2019-105 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
11 ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY
12 FLOOD CONTROL ZONE AND THE CITY OF BELLINGHAM FOR MANAGEMENT
13 AND OPERATION OF THE JOINT CITY-COUNTY AQUATIC INVASIVE SPECIES
14 (AIS) BOAT INSPECTION PROGRAM AT LAKES WHATCOM AND SAMISH, IN
15 THE AMOUNT OF \$123,000 (COUNCIL ACTING AS THE WHATCOM COUNTY
16 FLOOD CONTROL ZONE DISTRICT BOARD OF SUPERVISORS)

17
18 **Sidhu** reported for the Finance and Administrative Services Committee and **moved**
19 to approve the request.

20
21 The motion carried by the following vote:

22 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

23 Nays: None (0)

24 Absent: Byrd (1)

25
26 12. AB2019-107 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
27 ENTER IN TO A COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES
28 OF AMERICA ARMY CORPS OF ENGINEERS AND WHATCOM COUNTY FLOOD
29 CONTROL ZONE DISTRICT FOR REHABILITATION OF A NON-FEDERAL FLOOD
30 CONTROL WORK IN THE AMOUNT OF \$453,100 (COUNCIL ACTING AS THE
31 WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT BOARD OF
32 SUPERVISORS)

33
34 **Sidhu** reported for the Finance and Administrative Services Committee and **moved**
35 to approve the request.

36
37 The motion carried by the following vote:

38 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

39 Nays: None (0)

40 Absent: Byrd (1)

41
42 13. AB2019-115 REQUEST AUTHORIZATION FOR THE COUNTY EXECUTIVE TO
43 ENTER INTO A CONTRACT BETWEEN WHATCOM COUNTY FLOOD CONTROL
44 ZONE DISTRICT AND EXACT SCIENTIFIC SERVICES TO PROVIDE WATER
45 QUALITY ANALYTICAL TESTING SERVICES, IN THE AMOUNT OF \$90,000
46 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL ZONE
47 DISTRICT BOARD OF SUPERVISORS)

48
49 **Sidhu** reported for the Finance and Administrative Services Committee and **moved**
50 to approve the request.

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

- 1
2 The motion carried by the following vote:
3 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)
4 Nays: None (0)
5 Absent: Byrd (1)
6
- 7 14. AB2019-133 RESOLUTION REQUESTING SUPPORT FOR WASHINGTON STATE
8 HOUSE AND SENATE BILLS RELATED TO: POLLUTION PREVENTION;
9 INCREASING HABITAT AND FISH ABUNDANCE; PROTECTION OF SOUTHERN
10 RESIDENT ORCA WHALES FROM VESSELS; AND IMPROVING THE SAFETY OF
11 OIL TRANSPORTATION
12
- 13 **Sidhu moved** to approve the resolution.
14
15 The motion was seconded.
16
17 **Brenner moved** to hold in Council for two weeks.
18
19 The motion to hold was seconded.
20
- 21 Councilmembers discussed allowing councilmembers time to read the materials
22 related to the resolution before approving it.
23
- 24 The motion to hold in Council carried by the following vote:
25 Ayes: Brenner, Browne, Donovan, Frazey, and Sidhu (5)
26 Nays: None (0)
27 Absent: Byrd (1)
28 Abstains: Donovan (1)
29
- 30 15. AB2019-136 REQUEST APPROVAL TO SEND LETTER REQUESTING STATE
31 FUNDING TO SUPPORT THE WORK OF THE WHATCOM COUNTY MARINE
32 RESOURCES COMMITTEE
33
- 34 **Donovan moved** to approve the request.
35
36 The motion was seconded.
37
- 38 The motion carried by the following vote:
39 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)
40 Nays: None (0)
41 Absent: Byrd (1)
42
- 43 16. AB2019-137 RESOLUTION RESPECTFULLY REQUESTING THAT THE
44 WHATCOM COUNTY PROSECUTOR ASK THE WASHINGTON STATE ATTORNEY
45 GENERAL TO REVIEW AND UPDATE OPINIONS PREVIOUSLY PROVIDED
46 RELATED TO THE ELIGIBILITY OF COUNTY COUNCIL MEMBERS AND
47 COMMISSIONERS TO BE APPOINTED TO VACANT LEGISLATIVE POSITIONS
48
- 49 **Donovan moved** to approve the request.
50

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 The motion was seconded.

2
3 **Brenner moved** to hold in Council for two weeks.

4
5 The motion to hold was seconded.

6
7 Councilmembers discussed allowing councilmembers time to read the materials
8 related to the resolution before approving it.

9
10 The motion to hold in Council carried by the following vote:

11 Ayes: Brenner, Buchanan, Donovan, and Sidhu (4)

12 Nays: Browne and Frazey (2)

13 Absent: Byrd (1)

14
15 Councilmembers discussed whether they could make comments on an agenda item
16 that was held in Council.

17
18 **Browne moved** to reconsider the motion to hold.

19
20 The motion to reconsider was seconded.

21
22 The motion to reconsider failed by the following vote:

23 Ayes: Browne and Frazey (2)

24 Nays: Brenner, Buchanan, Donovan, and Sidhu (4)

25 Absent: Byrd (1)

26
27 *(Clerk's Note: See discussion of this item later in the meeting, under the section*
28 *Committee Reports, Other Items, and Councilmember Updates.)*

29
30
31 **INTRODUCTION ITEMS**

32
33 **Buchanan moved** to accept Introduction Items one through eight and ten. Item
34 nine is withdrawn from the agenda.

35
36 The motion was seconded.

37
38 The motion carried by the following vote:

39 Ayes: Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

40 Nays: None (0)

41 Absent: Byrd (1)

42
43 1. AB2019-027 ORDINANCE AMENDING WHATCOM COUNTY CODE 6.04
44 (ANIMAL CONTROL), CHAPTER 6.04.020 (DEFINITIONS) AND 6.04.031
45 (ADMINISTRATION AND ENFORCEMENT)

46
47 2. AB2019-103 ORDINANCE PROPOSING MODIFICATIONS TO WHATCOM
48 COUNTY CODE 2.27A, AQUATIC INVASIVE SPECIES (AIS)

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

- 1 3. AB2019-106 ORDINANCE AMENDING THE UNIFIED FEE SCHEDULE TO
2 ACCOMMODATE CHANGES TO WHATCOM COUNTY CODE 2.27A, AQUATIC
3 INVASIVE SPECIES
4
- 5 4. AB2019-121 ORDINANCE AMENDING WHATCOM COUNTY CODE SECTION
6 1.14 CORRECTING CERTAIN PRECINCT BOUNDARY LINES AND PRECINCT
7 MAPS
8
- 9 5. AB2019-124 ORDINANCE AMENDING THE 2019 WHATCOM COUNTY
10 BUDGET, REQUEST NO. 2, IN THE AMOUNT OF \$4,901,742
11
- 12 6. AB2019-128 ORDINANCE AMENDING COURTHOUSE BUILDING ENVELOPE
13 PROJECT BUDGET (AS ESTABLISHED THROUGH ORDINANCE 2014-085)
14 THIRD REQUEST, IN THE AMOUNT OF \$4,700,000 FOR A TOTAL PROJECT
15 BUDGET OF \$7,377,809
16
- 17 7. AB2019-127 RECEIPT OF APPLICATION FOR THE WHATCOM COUNTY
18 PLANNING COMMISSION, APPLICANT: BOB BURR (COMMITTEE ASSISTS
19 THE PLANNING AND DEVELOPMENT SERVICES DEPARTMENT IN CARRYING
20 OUT ITS DUTIES, WHICH INCLUDE HELPING TO PREPARE AND EXECUTE THE
21 COMPREHENSIVE PLAN AND MAKING RECOMMENDATIONS FOR ADOPTION
22 OF OFFICIAL CONTROLS AND/OR AMENDMENTS) (APPLICATION DEADLINE
23 FOR ANY OTHER APPLICANTS IS 10:00 A.M. FEBRUARY 19, 2019)
24
- 25 8. AB2019-129 RECEIPT OF APPLICATION FOR THE
26 SUMAS/EVERSON/NOOKSACK FLOOD CONTROL SUB-ZONE ADVISORY
27 COMMITTEE - APPLICANT: LARRY MADES (THE COMMITTEE IS AN INTEGRAL
28 PART OF THE PROGRAM REVIEWING THE COMPREHENSIVE PLAN FOR
29 FLOOD CONTROL) (APPLICATION FOR DEADLINE FOR ANY OTHER
30 APPLICANTS IS 10 A.M. FEBRUARY 19, 2019)
31
- 32 9. AB2019-131 RESOLUTION AUTHORIZING THE SALE OF SURPLUS PERSONAL
33 PROPERTY PURSUANT TO WCC 1.10
34
- 35 10. AB2019-126 RESOLUTION AMENDING THE 2019 FLOOD CONTROL ZONE
36 DISTRICT AND SUBZONES BUDGET, REQUEST NO. 2, IN THE AMOUNT OF
37 \$90,659 (COUNCIL ACTING AS THE WHATCOM COUNTY FLOOD CONTROL
38 ZONE DISTRICT BOARD OF SUPERVISORS)
39
40

41 COMMITTEE REPORTS, OTHER ITEMS, AND COUNCIL MEMBER UPDATES

42
43 Committee Chairs gave committee reports.

44
45 Councilmembers gave updates on recent activities and upcoming events.

46
47 Karen Frakes, Prosecutor's Office, answered questions on and councilmembers
48 discussed the process for requesting an opinion from the State Attorney General.
49

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

ADJOURN

The meeting adjourned at 9:33 p.m.

The County Council approved these minutes on _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Rud Browne, Council Chair

Jill Nixon, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: MIN2019-019

File ID: MIN2019-019 **Version:** 1 **Status:** Agenda Ready
File Created: 02/19/2019 **Entered by:** JNixon@co.whatcom.wa.us
Department: Council Office **File Type:** Minutes Consent
First Assigned to: Council
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Special County Council for February 15, 2019

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

HISTORY OF LEGISLATIVE FILE

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

Attachments: Special County Council for February 15 2019.pdf

Final Action:
Enactment Date:
Enactment #:

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

WHATCOM COUNTY COUNCIL
Special County Council

February 15, 2019

CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 1:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Rud Browne, Barry Buchanan, Todd Donovan, Carol Frazey, and Satpal Sidhu.

Absent: Tyler Byrd.

1. DISCUSSION REGARDING THE POSSIBLE OPENING OF AN EMERGENCY SHELTER

Jack Louws, County Executive, gave a staff report on current operations, permitting requirements, and planning for future events.

Louws and the following staff answered questions:

- Bill Elfo, County Sheriff
- Karen Frakes, Prosecutor's Office
- Tyler Schroeder, Administrative Services Department

Councilmembers and staff discussed the specific emergency that necessitates the special meeting, City of Bellingham permitting requirements and potential exemptions, the current status of and processes for finding shelter for unhoused individuals during the current cold weather event, the capacity of current shelters, gaps in service, liability concerns, and the processes of the County's Department of Emergency Management.

Jim Peterson, HomesNow, spoke on the status of capacity of current shelters, costs, and gaps in service.

Michael Lilliquist, Bellingham City Council Member, answered questions.

Councilmembers and staff continued to discuss City of Bellingham regulations and the possibility of opening an emergency shelter location in a County facility within the City of Bellingham, including protocols for severe weather shelters in the emergency disaster management plans, and whether the Council can appropriate funds for these issues.

Ron Schultz, Bellingham Seventh-Day Adventist Church Pastor, spoke about his Church's experiences in providing shelter services.

Councilmembers and staff continued to discuss trained and untrained staff resources and coordination between the City of Bellingham and Whatcom County.

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

The following people spoke:

- Amy Glasser
- Krista Rome
- Ronna Loerch
- Hans Erchinger-Davis, Lighthouse Mission Ministries Director, spoke on his organization's services and capacity.

(Clerk's Note: Councilmember Sidhu left the meeting at 3:05 p.m.)

- Autumn Lynn
- Lynnette Allen
- Sarah *(inaudible)*

Buchanan moved to respectfully request the administration open the Civic Center Garden Room for shelter as soon as possible after Bellingham permitting allows.

The motion was seconded.

Councilmembers and staff discussed the Council instructing the Executive to take over the City of Bellingham's jurisdiction and encouraging Bellingham to reopen their shelter.

Buchanan restated the motion that, in coordination with City of Bellingham and once the City makes its permitting decision at 4:00 p.m., the County make every effort to open the Civic Center Garden Room so it's available and staffed for a shelter immediately.

Brenner moved to call the question.

The motion to call the question was seconded.

The motion to call the question carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Donovan, and Frazey (5)
Nays: None (0)
Absent: Byrd and Sidhu (2)

The main motion carried by the following vote:

Ayes: Brenner, Browne, Buchanan, Donovan, and Frazey (5)
Nays: None (0)
Absent: Byrd and Sidhu (2)

The following people spoke:

- Jocelyn Mansfield
- Marcus D., HomesNow
- Michael Lilliquist
- Jim Peterson
- Rachel Duval
- Von Ochoa
- Jim Peterson

DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

1 Councilmembers spoke about the development of the County's new crisis
2 stabilization facility and coordinating the efforts of the Lighthouse Mission and HomesNow.
3

4
5 ADJOURN
6

7 The meeting adjourned at 3:42 p.m.
8

9 The Council approved these minutes on _____, 2019.
10

11 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

12
13
14
15
16 _____
17 Dana Brown-Davis, Council Clerk

Rud Browne, Council Chair

18
19
20
21 _____
22 Jill Nixon, Minutes Transcription



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-027

File ID:	AB2019-027	Version:	1	Status:	Introduced for Public Hearing
File Created:	01/02/2019	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Ordinance		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:	02/26/2019	Hearing Date:	02/26/2019

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 6.04 Animal Control, Chapter 6.04.020 Definitions and 6.04.031 Administration and Enforcement

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Whatcom County Code 6.04 Animal Control, Chapter 6.04.020 Definitions and 6.04.031 Administration and Enforcement

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo WCC 6.04, Ordinance to amend WCC 6.04, WCC defintions 6.04.020 redline, WCC defintions 6.04.020 clean, Animal Control WCC code 6.04.031 redline, Animal Control WCC code. 6.04.031 clean

Final Action:
Enactment Date:
Enactment #:



TO: Members of the Whatcom County Council

FROM: Tyler Schroeder, Deputy Executive and Christopher Quinn, Deputy Prosecutor

RE: Amending Whatcom county Code Section 6.04, Animal Control

Date: February 5, 2019

Requested Action:

Consider and approve proposed amendments to Whatcom County Code (WCC) 6.04 Animal Control that provides regulations within the unincorporated areas of Whatcom County and specific controls within designated urban areas of Whatcom County to control animal conduct.

Background and Purpose:

The purpose of the proposed amendments to WCC 6.04 is the following:

- A) To more clearly identify the entities (including a humane society) that may be authorized and obligated to administer and enforce provisions of the WCC related to animal control;
- B) To update the definitions to include humane societies, and other animal care/control agencies as animal control authorities;
- C) To define the animal control officer for purposes of the Code.

These proposed changes clarify the designation of animal care and control services in the unincorporated areas of Whatcom County.

Please contact Tyler Schroeder at extension 5207 or Christopher Quinn at 5729 for questions or concerns regarding this amendment.

SPONSORED BY: _____
PROPOSED BY: County Executive
INTRODUCTION DATE: _____

ORDINANCE NO. 2019-___

AMENDING WHATCOM COUNTY CODE
SECTION 6.04, ANIMAL CONTROL

WHEREAS, Section 6.04 of the Whatcom County Code provides regulations within the unincorporated areas of Whatcom County and specific controls within designated urban areas of Whatcom County to control animal conduct; and

WHEREAS, Section 6.04.060 of the Whatcom County Code does not provide legal recourse to residents that have at large domestic animals trespassing upon their property outside of dog control zones and does not provide the animal control agency the ability to impound such animals; and

WHEREAS, in order to protect residents and their property from trespassing domestic animals and to permit the animal control agency to impound said domestic animals, Section 6.04.060 needs to be amended; and

WHEREAS, in order to provide a more democratic process for animal owners to request a hearing to contest a declaration of dangerous or potentially dangerous dog, Section 6.04.100 should be repealed and Section 6.04.232 "Contested Hearing" should be added to the Whatcom County Code to reflect that these contested hearings will be heard by the District Court of Whatcom County.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Section 6.04.060 of the Whatcom County Code be amended as indicated in Exhibit A to this ordinance; that Section 6.04.100 of the Whatcom County Code be repealed as indicated in Exhibit B to this ordinance; and that Section 6.04.232 be added to the Whatcom County Code as indicated in Exhibit C to this ordinance.

ADOPTED THIS _____ DAY OF _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Council Chair

APPROVED AS TO FORM

APPROVED () DENIED ()



Deputy Prosecuting Attorney

Jack Louws, County Executive

6.04.020 Definitions. ~~Share~~

A. “Adult dog” means any dog, male or female, seven months of age or older.

B. “Allow” means to permit by neglecting to restrain or prevent.

C. “Animal” shall have its customary common meaning and shall include dogs where applicable.

D. “Animal control authority ~~department~~” means the agency or department a County department or agency, or a humane society or other animal care and control agency authorized designated by action of the county council, ~~to that~~ provides animal housing, care, housing and control services for the unincorporated areas of Whatcom County, and whose employees are either deputized by the Whatcom County sheriff or are otherwise are deputized by the Whatcom County sheriff authorized pursuant to this title and RCW 16.52 for the purpose of enforcing to enforce -this title and laws of the state of Washington as they pertain to animal control and welfare.

E. “Animal control officer” means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal control authority or humane society, or deputized by the Whatcom County sheriff, to aid in the enforcement of ordinances or laws regulating the care and control of animals.

~~EF.~~ “Animal shelter” means a facility used to care for homeless, stray or unwanted animals by a governmental entity or authorized animal welfare society, and may include more than one location.

~~FG.~~ “Animal sanctuary” means a housing and living facility for nondomesticated animals to live their lives free from abuse and neglect. The facility serves as an alternate to euthanasia and provides a secure home where rescued animals can live with dignity and proper care.

~~GH.~~ “At large” means to be off the premises of the owner and not under the control of either the owner or a person authorized by the owner.

HI. “Dangerous dog” means any dog that, according to the records of the appropriate authority, (1) has inflicted severe injury on a human being without provocation on public or private property, (2) has killed a domestic animal without provocation while off the owner’s property, or (3) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

IJ. “Director” means the head administrative official of the animal control authority, the humane society, or the department that has been authorized by the Whatcom County council.

JK. “Dog” means any member, male or female, of the family *Canis familiaris*.

KL. “Exotic animal” means any animal not native to or usually found as domestic pets in the United States, including but not limited to lions, tigers, bears, gorillas, chimpanzees, lynx, cougars, jaguars, venomous snakes, and includes “wild animals” such as but not limited to wolves, raccoons, skunks, foxes, coyotes, and hybrid wolves and coyotes.

LM. “Good animal husbandry” includes, but is not limited to, the dehorning of cattle and other horn-bearing livestock, and castration or neutering of any animal, according to accepted practices of veterinary medicine or normally accepted animal husbandry.

MN. “Harboring or keeping an animal” means providing food and care for the animal on one’s premises. An occupant of any premises will be presumed to be harboring or keeping an animal within the meaning of this chapter when an animal remains on the premises or regularly returns to the premises for food and care for a period of 14 days.

NO. “Livestock” means horses, cattle, sheep, goats, swine, donkeys, mules and domestic fowl and rabbits.

OP. “Owner” means any person, firm, corporation, organization or department possessing, harboring, keeping, having any interest in, or having control or custody of an animal.

PQ. “Pet shop” is any establishment or premises maintained for the purchase, sale or exchange of pets of any type.

QR. “Potentially dangerous dog” means any dog that when unprovoked: (1) inflicts bites on a human or domestic animal either on public or private property, or (2) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.

RS. “Psittacine bird” includes all birds commonly known as parrots, macaws, cockatoos, lovebirds, parakeets and all other birds of the order Psittaciformes.

ST. “Severe injury” means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

TU “Stray animal” means any unidentified dog, cat or other animal whose owner is unknown or who has no owner. The stray animal is declared to be a nuisance, and any such stray may be seized and impounded. For the purpose of this section, “stray dog” or “stray animal” means any dog, cat or other animal appearing or remaining in a neighborhood or any public place without an apparent home.

UV. “Under control” means that the owner, by means of a leash, restrains the dog to the owner’s immediate proximity, preventing the dog from trespassing upon property or annoying or chasing other persons, animals, or vehicles of any sort.

VW. “Vicious animal” includes any whose temperament or habits create danger of injury to persons or other animals or create a reasonable apprehension of injury to persons or other animals.

| WX. “Wild animal” means an animal living in its natural state and native to the United States, but not normally domesticated, raised or bred by man. (Ord. 2002-052; Ord. 98-022; Ord. 90-82 (part); Ord. 90-53 (part)).

6.04.020 Definitions.

A. “Adult dog” means any dog, male or female, seven months of age or older.

B. “Allow” means to permit by neglecting to restrain or prevent.

C. “Animal” shall have its customary common meaning and shall include dogs where applicable.

D. “Animal control authority” means a County department or agency, or a humane society or other animal care and control agency designated by action of the county council, that provides animal housing, care, and control services for the unincorporated areas of Whatcom County, and whose employees are either deputized by the Whatcom County sheriff or are otherwise authorized pursuant to this title and RCW 16.52 to enforce this title and laws of the state of Washington as they pertain to animal control and welfare

E. "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal control authority or humane society, or deputized by the Whatcom County sheriff, to aid in the enforcement of ordinances or laws regulating the care and control of animals.

F.. “Animal shelter” means a facility used to care for homeless, stray or unwanted animals by a governmental entity or authorized animal welfare society, and may include more than one location.

G.. “Animal sanctuary” means a housing and living facility for non-domesticated animals to live their lives free from abuse and neglect. The facility serves as an alternate to euthanasia and provides a secure home where rescued animals can live with dignity and proper care.

H.. “At large” means to be off the premises of the owner and not under the control of either the owner or a person authorized by the owner.

I. “Dangerous dog” means any dog that, according to the records of the appropriate authority, (1) has inflicted severe injury on a human being without provocation on public or private property, (2) has killed a domestic animal without provocation while off the owner’s property, or (3) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

J. “Director” means the head administrative official of the animal control authority, the humane society, or the department that has been authorized by the Whatcom County council.

K “Dog” means any member, male or female, of the family *Canis familiaris*.

L. “Exotic animal” means any animal not native to or usually found as domestic pets in the United States, including but not limited to lions, tigers, bears, gorillas, chimpanzees, lynx, cougars, jaguars, venomous snakes, and includes “wild animals” such as but not limited to wolves, raccoons, skunks, foxes, coyotes, and hybrid wolves and coyotes.

M. “Good animal husbandry” includes, but is not limited to, the dehorning of cattle and other horn-bearing livestock, and castration or neutering of any animal, according to accepted practices of veterinary medicine or normally accepted animal husbandry.

N. “Harboring or keeping an animal” means providing food and care for the animal on one’s premises. An occupant of any premises will be presumed to be harboring or keeping an animal within the meaning of this chapter when an animal remains on the premises or regularly returns to the premises for food and care for a period of 14 days.

O. “Livestock” means horses, cattle, sheep, goats, swine, donkeys, mules and domestic fowl and rabbits.

P. “Owner” means any person, firm, corporation, organization or department possessing, harboring, keeping, having any interest in, or having control or custody of an animal.

Q. “Pet shop” is any establishment or premises maintained for the purchase, sale or exchange of pets of any type.

R. “Potentially dangerous dog” means any dog that when unprovoked: (1) inflicts bites on a human or domestic animal either on public or private property, or (2) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.

S. “Psittacine bird” includes all birds commonly known as parrots, macaws, cockatoos, lovebirds, parakeets and all other birds of the order Psittaciformes.

T. “Severe injury” means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

U “Stray animal” means any unidentified dog, cat or other animal whose owner is unknown or who has no owner. The stray animal is declared to be a nuisance, and any such stray may be seized and impounded. For the purpose of this section, “stray dog” or “stray animal” means any dog, cat or other animal appearing or remaining in a neighborhood or any public place without an apparent home.

V. “Under control” means that the owner, by means of a leash, restrains the dog to the owner’s immediate proximity, preventing the dog from trespassing upon property or annoying or chasing other persons, animals, or vehicles of any sort.

W. “Vicious animal” includes any whose temperament or habits create danger of injury to persons or other animals or create a reasonable apprehension of injury to persons or other animals.

X. “Wild animal” means an animal living in its natural state and native to the United States, but not normally domesticated, raised or bred by man. (Ord. 2002-052; Ord. 98-022; Ord. 90-82 (part); Ord. 90-53 (part)).

6.04.031 Administration and enforcement.

A. ~~Sheriff. A humane society or other animal control authority as defined under RCW 16.52 and that is designated by the County Council and the County Executive Administration and enforcement of this chapter shall be the responsibility of the Whatcom County sheriff, his deputized agent (the animal control authority) or other official designated by the county council and the county executive's office. The sheriff or deputized designee shall be responsible for administration and enforcement of this chapter, as to include the following:~~

1. Operate or cause to be operated an animal shelter;

2. If ~~the designee deems~~ deemed it necessary ~~by the designee~~, select, train, hire, and retain a qualified animal control officer or officers ~~who shall to~~ enforce the provisions of this chapter;

3. Investigate complaints pertaining to animal misconduct occurring in the unincorporated areas.

4. Administer animal licensing obligations provided for in this chapter, to include: the issuance and re-issuance of licenses; the collection of licensing fees, taxes, and penalties; and the enforcement of licensing requirements.

~~B. County Executive. The county executive's office shall oversee the administration, issuance, re-issuance and enforcement of license fees and other tax charges or penalties as provided for in this chapter.~~

B. In the absence of a designated humane society or other animal control authority pursuant to Section A, the Whatcom County Sheriff's Department Office shall be responsible for the administration and enforcement of this chapter. (Ord. 98-022; Ord. 90-82 (part)).

6.04.031 Administration and enforcement.

A. A humane society or other animal control authority as defined under RCW 16.52 and that is designated by the County Council and the County Executive shall be responsible for administration and enforcement of this chapter, to include the following:

1. Operate or cause to be operated an animal shelter;
2. If the designee deems it necessary, select, train, hire, and retain a qualified animal control officer or officers to enforce the provisions of this chapter;
3. Investigate complaints pertaining to animal misconduct occurring in the unincorporated areas.
4. Administer animal licensing obligations provided for in this chapter, to include: the issuance and re-issuance of licenses; the collection of licensing fees, taxes, and penalties; and the enforcement of licensing requirements.

B. In the absence of a designated humane society or other animal control authority pursuant to Section A, the Whatcom County Sheriff's Office shall be responsible for the administration and enforcement of this chapter. (Ord. 98-022; Ord. 90-82 (part)).



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-103

File ID:	AB2019-103	Version:	1	Status:	Introduced for Public Hearing
File Created:	01/25/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:	02/26/2019	Hearing Date:	02/26/2019

TITLE FOR AGENDA ITEM:

Ordinance proposing modifications to Whatcom County Code 2.27A, Aquatic Invasive Species (AIS)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Works staff will introduce for discussion proposed changes to the aquatic invasive species ordinance (WCC 2.27A) to create a new class of watercraft, establish a one-day pass, and update definitions.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo for 2-12-2019, Ordinance for Introduction 2-12-2019

Final Action:
Enactment Date:
Enactment #:

Jon Hutchings
Director



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

MEMORANDUM

TO: Honorable Members of the Whatcom County Council, and
The Honorable Jack Louws, Whatcom County Executive

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Gary Stoyka, Natural Resources Manager *GS*

DATE: January 18, 2019

RE: Proposed Changes to the Aquatic Invasive Species Ordinance
(WCC 2.27A)

At the February 12, 2019 Finance Committee meeting, Public Works staff will introduce for discussion proposed changes to the aquatic invasive species ordinance (WCC 2.27A) scheduled for potential adoption by the Council on February 26, 2019.

Requested Action

Public Works is requesting discussion by County Council on the proposed ordinance changes. The proposed ordinance creates a new class of watercraft, establishes a one-day pass, and updates definitions. Public Works staff is working with City of Bellingham staff to pursue proposed modifications to their respective ordinances on a parallel track that will allow coordinated implementation of the Aquatic Invasive Species Program in time for the 2019 boating season. Public Works staff anticipates bringing the ordinance to the Council for adoption at the February 26th meeting.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this information.

Attachment

SPONSORED BY: _____
PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE CHAPTER 2.27A TO PREVENT THE RELEASE AND SPREAD OF AQUATIC INVASIVE SPECIES.

WHEREAS, the County has authority under Washington State law to protect the health, safety, and general welfare of the public, to regulate and protect waters within its jurisdiction, and to control the transport and release of Aquatic Invasive Species,

WHEREAS, Lake Whatcom and Lake Samish are the drinking water sources for approximately half of the residents of Whatcom County and the vast majority of the City of Bellingham residents; and

WHEREAS, Whatcom County has adopted goals and policies to protect Lake Whatcom, Lake Samish and other freshwater lakes and streams; and

WHEREAS, Aquatic Invasive Species pose a serious threat to the waters of Whatcom County and can have severe impacts to ecology, water quality, water supply infrastructure, and recreational use; and

WHEREAS, watercraft transported from water bodies with Aquatic Invasive Species to uninfested waters are the principal cause of new infestations; and

WHEREAS, prevention programs that include education, screening, and watercraft inspection are effective in preventing the spread of Aquatic Invasive Species to uninfested water bodies; and

WHEREAS, an Aquatic Invasive Species prevention program is necessary to reduce the risk of Aquatic Invasive Species infestation and related impacts at Lake Whatcom and other waters of Whatcom County; and

WHEREAS, Whatcom County has authority under RCW 36.32.120 and Washington State law generally to regulate and protect its water supply and other waters within its jurisdiction; and

WHEREAS, Whatcom County adopted Ordinance 2012-034 in September 25, 2012, codified at WCC Chapter 2.27A, to prevent the release and spread of Aquatic Invasive Species into waters of Whatcom County; and

WHEREAS, it is in the best interests of Whatcom County to amend WCC Chapter 2.27A to further define and enhance its Aquatic Invasive Species detection and prevention program, including the adoption of mandatory inspection and permitting requirements for watercraft in Whatcom County;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 2.27A is hereby deleted in its entirety and replaced with the following, adopted as set forth in Exhibit A, attached hereto.

ADOPTED this _____ day of _____ 2019.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON



Civil Deputy Prosecutor

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

Exhibit A

WCC Chapter 2.27A Aquatic Invasive Species

2.27A.010 Definitions

For the purpose of this chapter, the following definitions shall apply:

A. "Authorized Inspector" means a person who has received the necessary training approved by Whatcom County and authorized to inspect Watercraft to detect the presence of aquatic invasive species.

B. "Aquatic Invasive Species" and "AIS" shall mean an aquatic species that is: (i) nonnative to public water bodies located in unincorporated areas of Whatcom County; and (ii) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. and include "Aquatic Invasive Species" and "AIS" shall include but not be limited to those species classified in Washington Administrative Code (WAC) 220-12-090 as "prohibited aquatic animal species", and those plant species listed in WAC 16-752-400-415; 505; and 610. For purposes of this chapter, WAC 220-12-090 and WAC 16-752-400-415; 505; and 610, as presently constituted or as hereinafter amended, are adopted and incorporated herein by reference.

C. "Enforcement Officer" includes any Authorized Inspector and any peace officer with jurisdiction in Whatcom County, ~~and the County Noxious Weed Coordinator or his or her designee, to enforce the prohibitions set forth in this chapter.~~

D. "Inspection" means an inspection of a Watercraft or other vessel conducted by an Authorized Inspector for the purpose of detecting Aquatic Invasive Species and preventing their transport and release into any Public Water Body. Inspections may consist of questioning as well as a visual and tactile search of the exterior and interior of the Watercraft or other vessel, including but not limited to the hull, trailer, motor, propeller, bilge pump, compartments, bait well, ballast tank, bladder, and all areas of standing water.

E. "Inspection Seal" means a cord or tether installed by an Authorized Inspector in a manner that connects a Watercraft to its trailer for the purpose of indicating that the Watercraft has passed inspection, has not entered a water body since passing Inspection, and, therefore, may launch without further Inspection when returning to the same water body so long as the Inspection Seal is intact at the time of launch.

F. "Launch" means any act that places or attempts to place a Watercraft into a Public Water Body.

G. "Public Water Body" shall mean Lake Whatcom, Lake Samish, Baker Lake, Tennant Lake, Lake Terrell, Wisner Lake, Silver Lake, Toad Lake, Squalicum Lake, Reed Lake, Cain Lake and all other freshwater lakes and streams in unincorporated areas of Whatcom County where Watercraft have access.

G.H. "Motorized Propulsion System" shall mean any mechanism or system used to generate thrust to move a watercraft across water, including but not limited to outboard motors, inboard motors, jet motors, and inboard/outboard motors.

H.I. "Watercraft" shall mean any type of vessel, boat, or craft capable of being used as a means of transportation on water, including but not limited to motor boats, sail boats, row boats, kayaks, canoes, barges, and all associated equipment, including trailers, that routinely or reasonably could be expected to contain or come into contact with water. The term "Watercraft" specifically excludes the following: surf boards, paddle boards, and kite boards; and non-motorized inflatables that are 10 feet or less in length. "Watercraft" shall consist of the following categories:

- (1) "Class A Watercraft" shall mean any vessel that ~~has a motorized propulsion system~~ ~~or~~ requires registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030 and any vessel registered under the laws of a state other than Washington State or a country other than the United States.
- (2) "Class B Watercraft" shall mean any vessel that has a Motorized Propulsion System that does not require registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030 or under laws of a state other than Washington State or a country other than the United States.
- (3) "Class B-C Watercraft" shall mean vessels that do not have a Mmotorized ~~propulsion~~ ~~Propulsion system-System~~ and do not require registration by the State of Washington Department of Licensing under RCW 88.02 and WAC 308-93-030.

2.27A.020 Prohibitions

The following activities are prohibited:

- A. The transport or release of Aquatic Invasive Species into a Public Water Body.
- B. Launching, operating or keeping on a Public Water Body a Watercraft that has not submitted to Inspection and decontamination as required by this chapter.
- C. Launching, operating or keeping on a Public Water Body a Watercraft without a current AIS Permit as required by WCC 2.27A.050, below.

2.27A.030 Inspection and Decontamination.

- A. Inspections shall be required of:
 - i. All Watercraft prior to its first launch onto Lake Whatcom or Lake Samish in each calendar year; and
 - ii. All Watercraft prior to its first launch onto Lake Whatcom or Lake Samish after it has entered any fresh water body located outside Whatcom County, Washington; and

- iii. All Watercraft prior to each and every launch onto a Public Water Body from a public access point for which an AIS check station is operating under this chapter, except Watercraft bearing an intact Inspection Seal.
- B. Exemptions. Watercraft inspections and the associated fees shall not be required for:
- i. Law enforcement and emergency response watercraft.
 - ii. Watercraft involved in search and rescue operations or training.
- C. Inspection and Decontamination Services
- i. Whatcom County may establish and operate AIS check stations at public access points to Public Water Bodies.
 - ii. Whatcom County may, upon request by an owner or operator of a Watercraft, conduct an Inspection on private property owned by the Watercraft owner or operator.
 - iii. All AIS check stations operating under this chapter shall be marked by signs and staffed by one or more Authorized Inspectors. AIS check stations authorized by this chapter shall be subject to hours of operation and other program requirements established by the Director of Public Works or his designee.
 - iv. If, upon Inspection, an Authorized Inspector determines that a Watercraft is not contaminated with Aquatic Invasive Species, then said Watercraft shall be permitted to launch, subject to payment of fees authorized in WCC 2.27A.050.
 - v. If, upon Inspection, an Authorized Inspector reasonably suspects that a Watercraft or any other vessel is contaminated with Aquatic Invasive Species, the Authorized Inspector may decontaminate the watercraft on site or direct the Watercraft owner or operator to a decontamination station where the Watercraft will undergo a decontamination process. Following decontamination, the Watercraft owner or operator shall not launch the Watercraft onto a Public Water Body until the Watercraft has been re-inspected and approved for launch by an Authorized Inspector.
 - vi. A Watercraft owner or operator may refuse to stop and consent to Inspection at any AIS check station authorized by this chapter; provided, if any Watercraft owner or operator refuses to stop and consent to Inspection at an AIS check station authorized by this chapter, then said owner or operator shall not launch his or her Watercraft from said location and shall be in violation of this chapter if he or she nevertheless attempts to do so.

2.27A.040 Safe Harbor

Any person who voluntarily stops and consents to Inspection at an AIS check station or other inspection station and cooperates in the decontamination process shall not be subject to penalties under this chapter for possessing or transporting Aquatic Invasive Species.

2.27A.050 AIS Permits and Fees

- A. Every Watercraft subject to the inspection requirements of this Chapter shall visibly display a valid AIS Permit issued by Whatcom County or the City of Bellingham prior to launching and while operating on Public Water Bodies.
- B. AIS Permits shall be issued upon passage of Inspection and payment of the applicable fee.
- C. The fee for Inspection and decontamination services for ~~Class A and Class B Watercraft~~ all classes of Watercraft shall be established in the Whatcom County Unified Fee Schedule.
- D. AIS Permits shall be available as follows:
- i. Annual Sticker. Each Annual Sticker shall be effective during the calendar year in which it is issued and shall entitle the holder to unlimited Inspections and Inspection Seal installation services for the Watercraft to which the Annual Sticker is affixed.
 - ii. ~~Class A Three-Day~~ Pass. Each ~~three~~-day pass shall entitle the holder to unlimited inspections and sealing services for the applicable Watercraft for the duration of the period specified on the pass. Day passes are available for Class A and Class B Watercraft only.
 - ii.iii. Three Day Pass. Each three day pass shall entitle the holder to unlimited inspections and sealing services for the applicable Watercraft for the duration of the period specified on the pass. Three day passes are available for Class A and Class B Watercraft only.
 - iii.iv. Special Event Passes. Special event passes may be issued for fishing tournaments, sailing and rowing regattas, and other group events approved by the director of public works or his designee upon the event sponsor's execution of a special event agreement with Whatcom County or the City of Bellingham in a form approved by the director of public works. Special event passes shall entitle each event participant to inspection and sealing services for the duration of the event, subject to the terms and conditions of the special event agreement.
 - iv.v. Annual Watercraft Business Permit. Watercraft business permits may be issued to person or entities who are in the business of providing Watercraft services (including transport, maintenance, repair, storage or other similar activities) upon execution of a cooperative agreement with Whatcom County or City of Bellingham in a form approved by the director of public works. Watercraft business permits shall be effective during the calendar year in which they are issued and shall entitle the permit holder to expedited inspection services ~~and issuance of AIS annual stickers~~ for Watercraft within the company's possession or control, all subject to the terms and conditions of the cooperative agreement.
- E. An on-line AIS Awareness Course shall be developed and made available to the public. Persons successfully completing the on-line course shall, upon providing verification of their successful completion to the Authorized Inspector, be entitled to the reduced AIS Awareness fee schedule for AIS inspections for each boat that they own.

The AIS Awareness fee schedule shall be established in the Whatcom County Unified Fee Schedule.

F. AIS Permits are nontransferable and shall apply to a single Watercraft. AIS Permits shall be affixed to the Watercraft as directed by the Authorized Inspector in a visible location located above the waterline.

G. A Watercraft shall be deemed to be in compliance with the inspection and permitting requirements of this chapter if his or her Watercraft is currently in compliance with an Aquatic Invasive Species inspection and permitting program adopted by the City of Bellingham, Washington.

H. The fees authorized by this chapter are intended to offset the cost to Whatcom County of implementing this chapter for the purpose of detecting and preventing the spread of Aquatic Invasive Species and are not intended to be, nor shall they be construed to be, charges imposed upon access to Public Water Bodies for the purpose of outdoor recreation. Fees shall be evaluated annually to ensure they are sufficient for program needs.

2.27A.060 Cooperative Agreements.

Whatcom County may enter into cooperative agreements with persons and entities, including but not limited to, homeowner's associations, condominium associations, civic groups and governmental entities, to adopt and execute plans, which may be implemented inside or outside Whatcom County, to detect and prevent the transport and release of Aquatic Invasive Species in Public Water Bodies.

2.27A.070 Penalties

A. Any person violating this chapter shall have committed a civil infraction, and shall be punished by a fine not to exceed \$1,000 for each violation. Each violation of this chapter shall be a separate infraction, and in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct infraction. Civil infractions under this chapter shall be issued and processed in accordance with Chapter 7.80 RCW, except as otherwise provided in this chapter. Each party to a civil infraction case shall bear its own attorney's fees, witness fees and costs.

B. Any individual who violates this chapter may be held responsible for the costs expended by Whatcom County or its designee for response and mitigation of impacts.

C. Payment of any civil penalty herein shall not relieve any individual from the responsibility of correcting the violations as found by the Enforcement Officer.

D. Any person found not in compliance with this chapter is subject to citation, shall be escorted off the Public Water Body, and shall be subject to any other legal action as deemed necessary by the Enforcement Officer including but not limited to detaining said person and Watercraft until inspected and decontaminated as required under this chapter.

E. Fines collected as a result of violating this chapter that are not otherwise encumbered, shall be used to fund the Whatcom County Aquatic Invasive Species Management and Prevention Program.

2.27A.080 Applicability

The provisions of this chapter shall apply in addition to the provisions of any other code provision or ordinance. Where there is a conflict, the more restrictive provision shall apply. The provisions of this chapter are in addition to those provisions regulating Aquatic Invasive Species as contained in Washington State law.

2.27A.090 Severability.

If any section, provision, or portion of this chapter shall be determined to be invalid, the remainder of the chapter shall not for that reason be rendered ineffective or invalid.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-106

File ID:	AB2019-106	Version:	1	Status:	Introduced for Public Hearing
File Created:	01/25/2019	Entered by:	RKlein@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:	02/26/2019	Hearing Date:	02/26/2019

TITLE FOR AGENDA ITEM:

Ordinance amending the Unified Fee Schedule to accommodate changes to Whatcom County Code 2.27A, Aquatic Invasive Species

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Public Works staff will introduce for discussion proposed changes to the Unified Fee Schedule needed to accommodate changes to the aquatic invasive species ordinance (WCC 2.27A)

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Memo for 2-12-2019, Ordinance for Introduction 2-12-2019

Final Action:
Enactment Date:
Enactment #:



MEMORANDUM

TO: Honorable Members of the Whatcom County Council, and
The Honorable Jack Louws, Whatcom County Executive

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Gary Stoyka, Natural Resources Manager *MS*

DATE: January 18, 2019

RE: Proposed Changes to the Whatcom County Unified Fee Schedule
(Ordinance 2018-076)

At the February 12, 2019 Finance Committee meeting, Public Works staff will introduce for discussion proposed changes to the Unified Fee Schedule needed to accommodate changes to the aquatic invasive species ordinance (WCC 2.27A) scheduled for potential adoption by the Council on February 26, 2019.

Requested Action

Public Works is requesting discussion by County Council on the proposed ordinance changes. Public Works staff is working with City of Bellingham staff to pursue proposed modifications to their respective ordinances on a parallel track that will allow coordinated implementation of the Aquatic Invasive Species Program in time for the 2019 boating season. Public Works staff anticipates bringing the ordinance to the Council for adoption at the February 26th meeting.

Please contact Gary Stoyka at extension 6218 if you have any questions regarding this information.

Attachment

SPONSORED BY: _____
PROPOSED BY: _____
INTRODUCTION DATE: _____

ORDINANCE NO. _____

AMENDING THE WHATCOM COUNTY UNIFIED FEE SCHEDULE

WHEREAS, the Whatcom County Council adopted Ordinance No. _____ on _____, 2019, thereby establishing mandatory Aquatic Invasive Species inspections prior to launch at certain Whatcom County water bodies for new classes of watercraft; and

WHEREAS, the current Whatcom County Unified Fee Schedule was adopted by the Whatcom County Council as Ordinance No. 2018-076 on December 4, 2018; and

WHEREAS, fees for Aquatic Invasive Species inspections for these new classes of watercraft are not included in the current Unified Fee Schedule;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the current Whatcom County Unified Fee Schedule, Ordinance No. 2018-076, is hereby amended as set forth in Exhibit A, attached hereto.

ADOPTED this _____ day of _____ 2019.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON



Civil Deputy Prosecutor

Jack Louws, County Executive
() Approved () Denied

Date Signed: _____

Exhibit A

Unified Fee Schedule Whatcom County Ordinance 2018-076

DELETIONS:

Aquatic Invasive Species Inspection Class A Watercraft Multi-Day Pass:	\$20.00
Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker:	\$10.00
AIS Awareness - Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker:	no charge

ADDITIONS:

Aquatic Invasive Species Inspection Class A or Class B Watercraft 3-Day Pass:	\$20.00
Aquatic Invasive Species Inspection Class A or Class B Watercraft Day Pass:	\$10.00
Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker:	\$30.00
AIS Awareness - Aquatic Invasive Species Inspection Class B Watercraft Annual Sticker:	\$20.00
Aquatic Invasive Species Inspection Class C Watercraft Annual Sticker:	\$10.00
AIS Awareness - Aquatic Invasive Species Inspection Class C Watercraft Annual Sticker:	no charge

MODIFICATIONS:

Aquatic Invasive Species Inspection Class A Watercraft Annual Sticker:	\$50.00 <u>\$60.00</u>
--	-----------------------------------



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-121

File ID:	AB2019-121	Version:	1	Status:	Introduced for Public Hearing
File Created:	01/31/2019	Entered by:	DAdelste@co.whatcom.wa.us		
Department:	Auditor's Office	File Type:	Ordinance		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:	02/26/2019	Hearing Date:	02/26/2019

TITLE FOR AGENDA ITEM:

Ordinance Amending Whatcom County Code Section 1.14 Correcting Certain Precinct Boundary Lines and Precinct Maps

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Changes are needed to correct certain precinct boundary lines on certain map pages in the “Book of Election Precinct Maps” referred to in Whatcom County Code Section 1.14. The proposed changes are outlined on the attached table labeled as Exhibit A. The reason for those changes are indicated on that Exhibit as well. If approved the maps will be substituted for the designated maps and the new “Book of Election Precinct Maps” will be adopted by reference and be available through the Whatcom County Council Office and online through the Election page at the Whatcom County Auditor’s Office website homepage.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED FOR PUBLIC HEARING	Council

Attachments: Precinct Ordinance revisions 2019.doc, EX_A Prec map attach_.pdf

Final Action:
Enactment Date:
Enactment #:

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE SECTION 1.14, ELECTORAL PRECINCTS, FOR CHANGES
IN CERTAIN VOTING PRECINCT BOUNDARIES IN WHATCOM COUNTY

WHEREAS, it has been determined that certain precinct boundary line adjustments in Whatcom County Code Section 1.14 are needed due to annexations in the City of Bellingham and the City of Lynde; and

WHEREAS, the changes as proposed in the attached table labelled "Exhibit A" indicate which precincts are affected for what reason and the new page numbers to be added or modified in the "Book of Election Precinct Maps" previously adopted effective January 1, 2017; and

WHEREAS, RCW 29A.16.040 requires the county legislative authority of each county in the state to divide the county into election precincts and establish the boundaries of the precincts; and

WHEREAS, RCW 29A.16.040 further provides that no precinct boundary changes may be made starting fourteen (14) days prior to the first day candidates may file for the primary election through the period ending with the general election; and

WHEREAS, the first day for candidates to file this year is the 13th day of May, 2019, and

WHEREAS, RCW 29A.76.030 provides the County Auditor shall transfer and notify any registered voters that may be affected by the change in boundaries.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the changes to the "Book of Election Precinct Maps," shall be adopted by reference to Exhibit A attached hereto designating the new boundaries affecting Precincts 135, 139, 157, 159, 160, 273, 506, 272, 271, and 270, and the new "Book of Election Precinct Maps" in its entirety will be adopted by reference and available through the Whatcom County Council Office and online through the Election page at the Whatcom County Auditor's Office homepage.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,
WASHINGTON

Dana Brown-Davis, County Clerk

Rud Browne, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Royce Buckingham, Civil Deputy Prosecutor

Jack Louws, County Executive

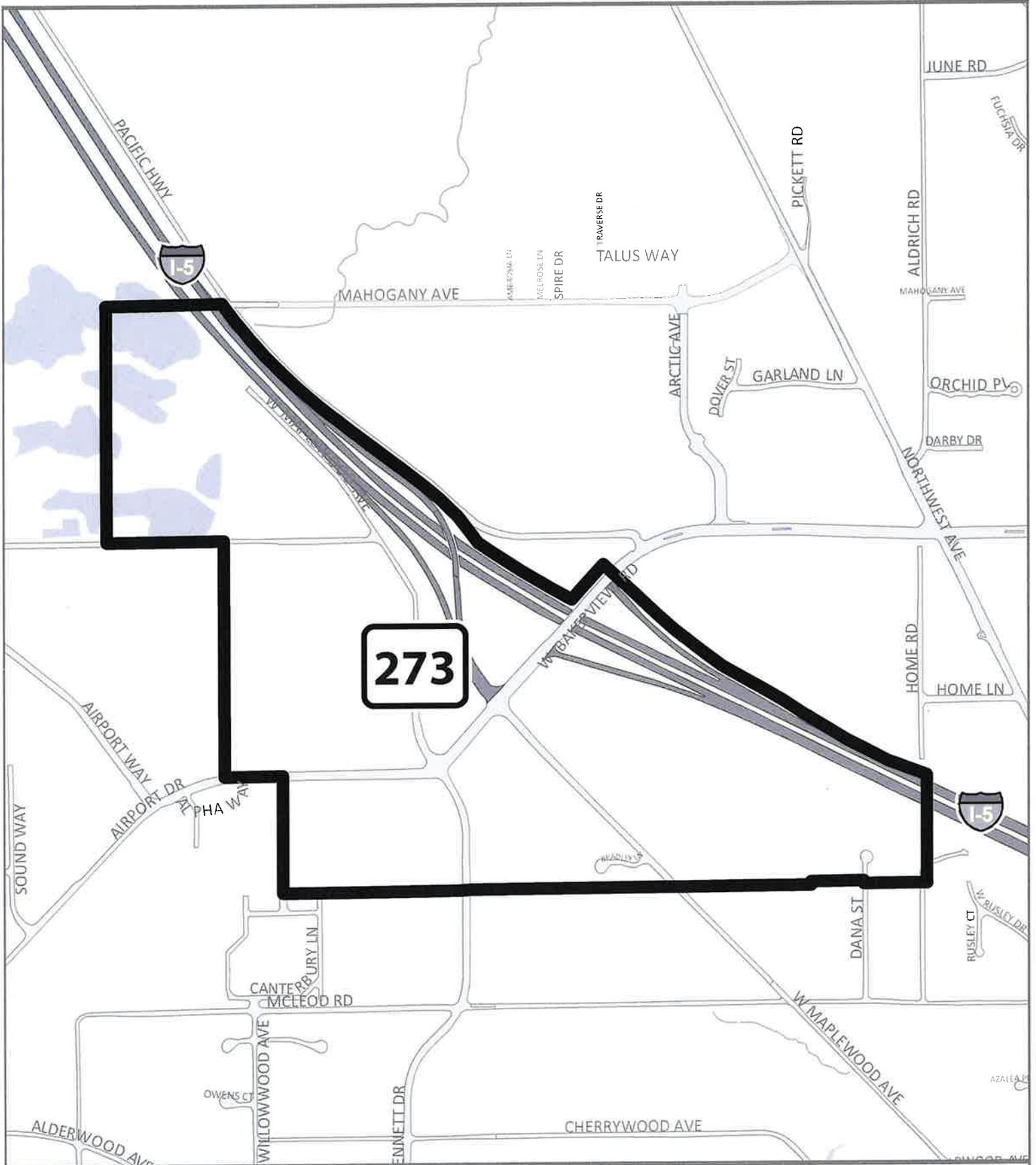
Date: _____

Exhibit A

Precinct Affected	Reason	Changes Proposed	New Precinct Assignment
135	City of Bellingham annexation	Move voters from Precinct 135 into Precinct 273	273
139	City of Lynden annexation	Move voters from Precinct 139 into Precinct 605	605
157	City of Bellingham annexation	Move voters from Precinct 157 into Precinct 272	272
159	City of Bellingham annexation	Move voters from Precinct 159 into Precinct 271	271
160	City of Bellingham annexation	Move voters from Precinct 160 into Precinct 270	270

Pages in "Book of Election Precinct Maps" affected:

- 1) Substitute page 33 (Precinct 135)
- 2) New page 148D (Precinct 273)
- 3) Substitute page 37 (Precinct 139)
- 4) Substitute page 168 (Precinct 605)
- 5) Substitute page 55 (Precinct 157)
- 6) New page 148C (Precinct 272)
- 7) Substitute page 57 (Precinct 159)
- 8) New Page 148B (Precinct 271)
- 9) Substitute page 58 (Precinct 160)
- 10) New page 148A (Precinct 270)



332

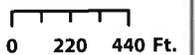


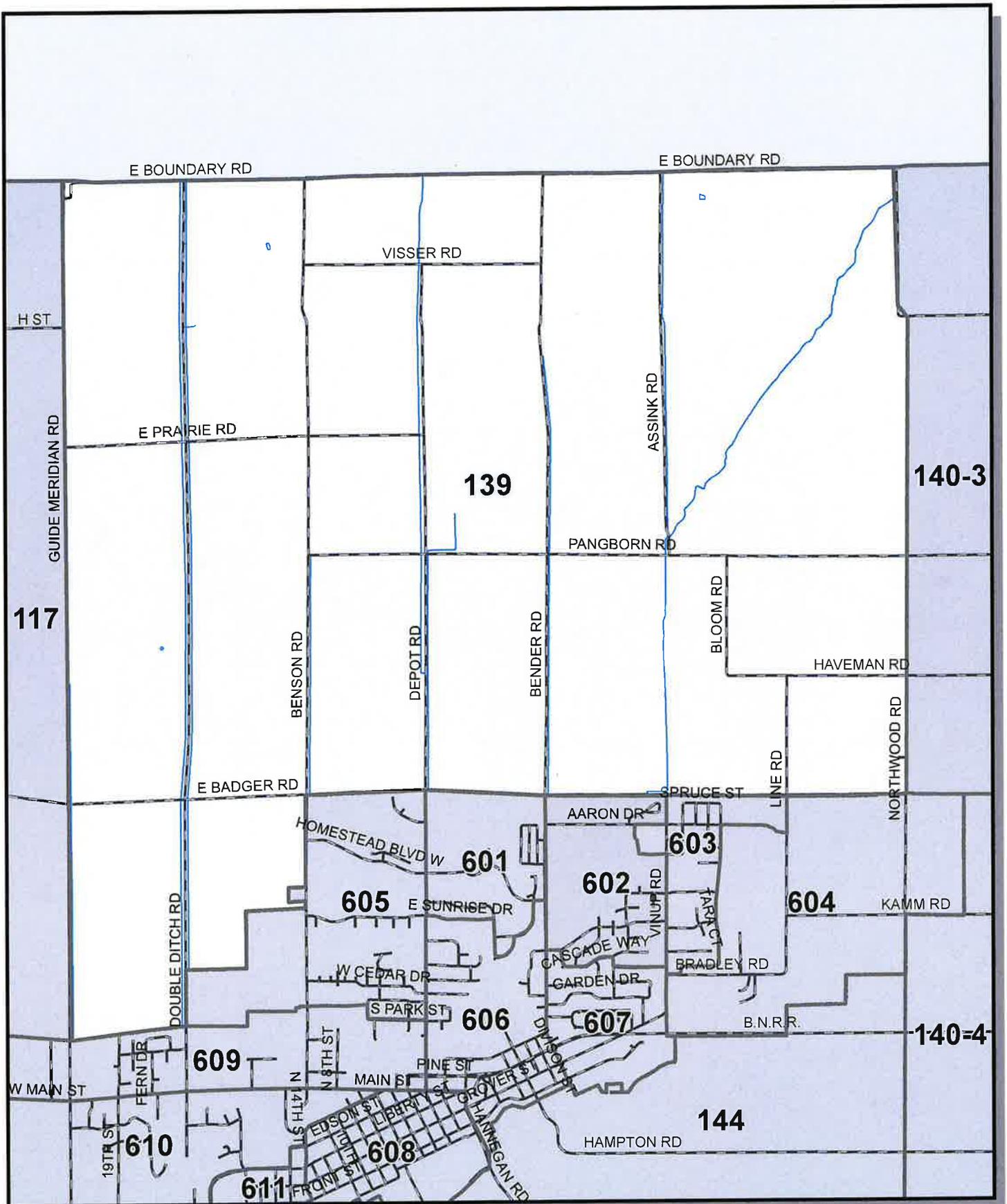
Precinct 273

Ward	1
Council District	4
Leg. District	42
Cong. District	1



January 2019





Whatcom County Precinct 139

County Council District 4
 Legislative District 42
 Congressional District 1

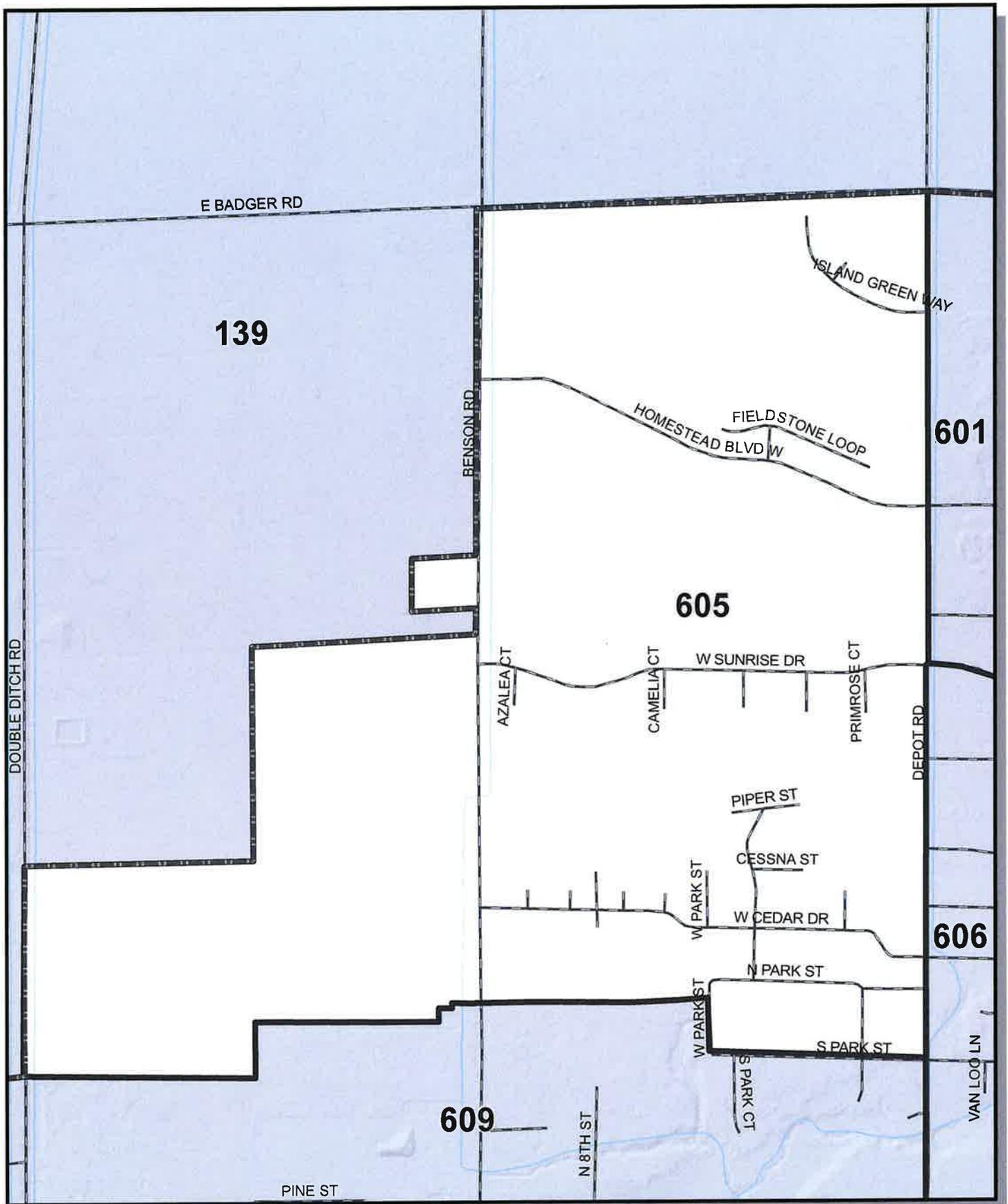
USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.

0 1,000 2,000 4,000 Feet



333 2019



Whatcom County Precinct 605

County Council District 4
 Legislative District 42
 Congressional District 1

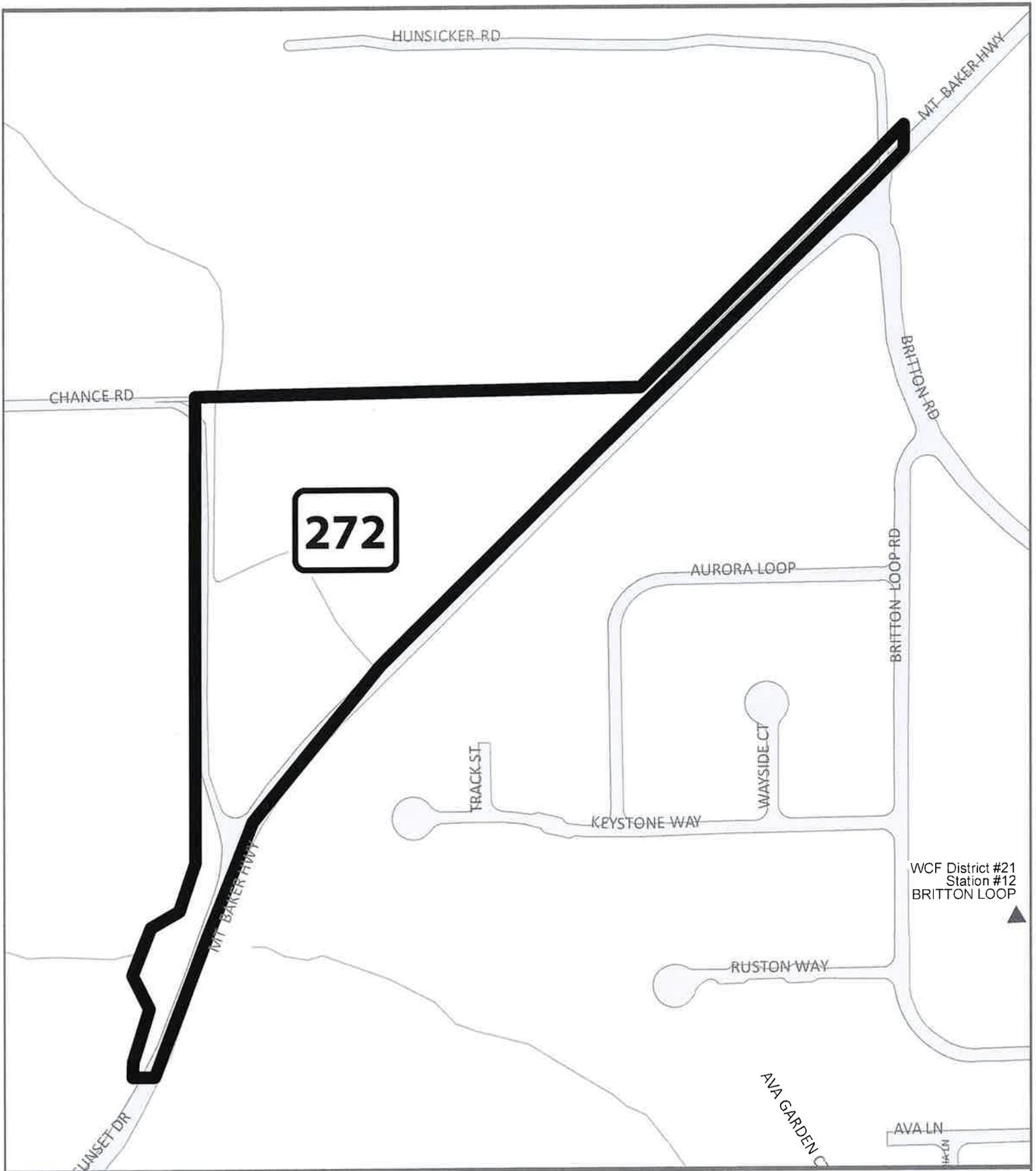
334

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of this map.

0 265 530 1,060 Feet





WCF District #21
Station #12
BRITTON LOOP



336



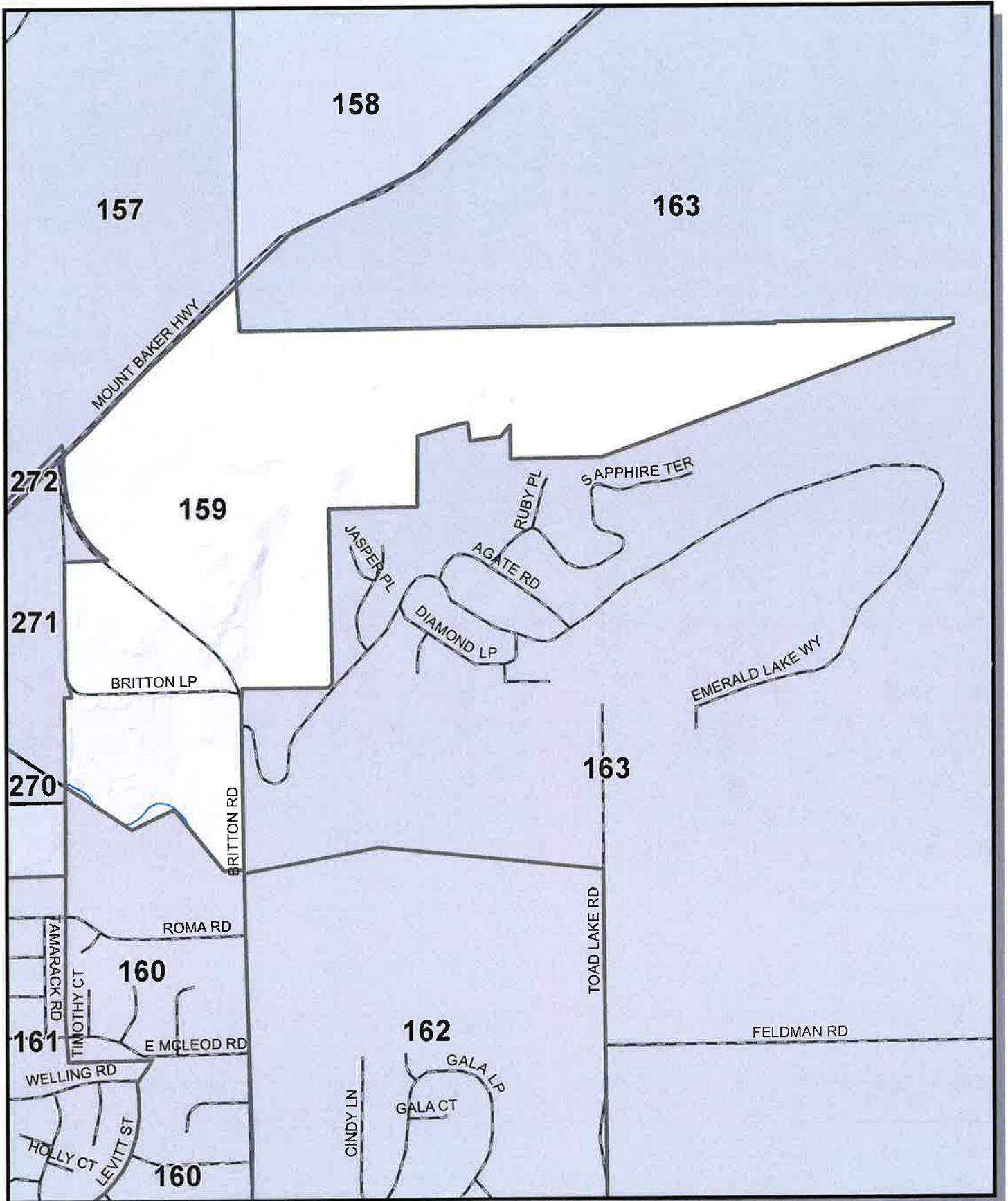
Precinct 272

Ward	2
Council District	3
Leg. District	42
Cong. District	1



January 2019

0 75 150 Ft.



Whatcom County Precinct 159

County Council District 3
 Legislative District 40
 Congressional District 1

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, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damages, loss, or liability arising from any use of this map.

0 330 660 1,320 Feet



337 2019



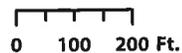
338

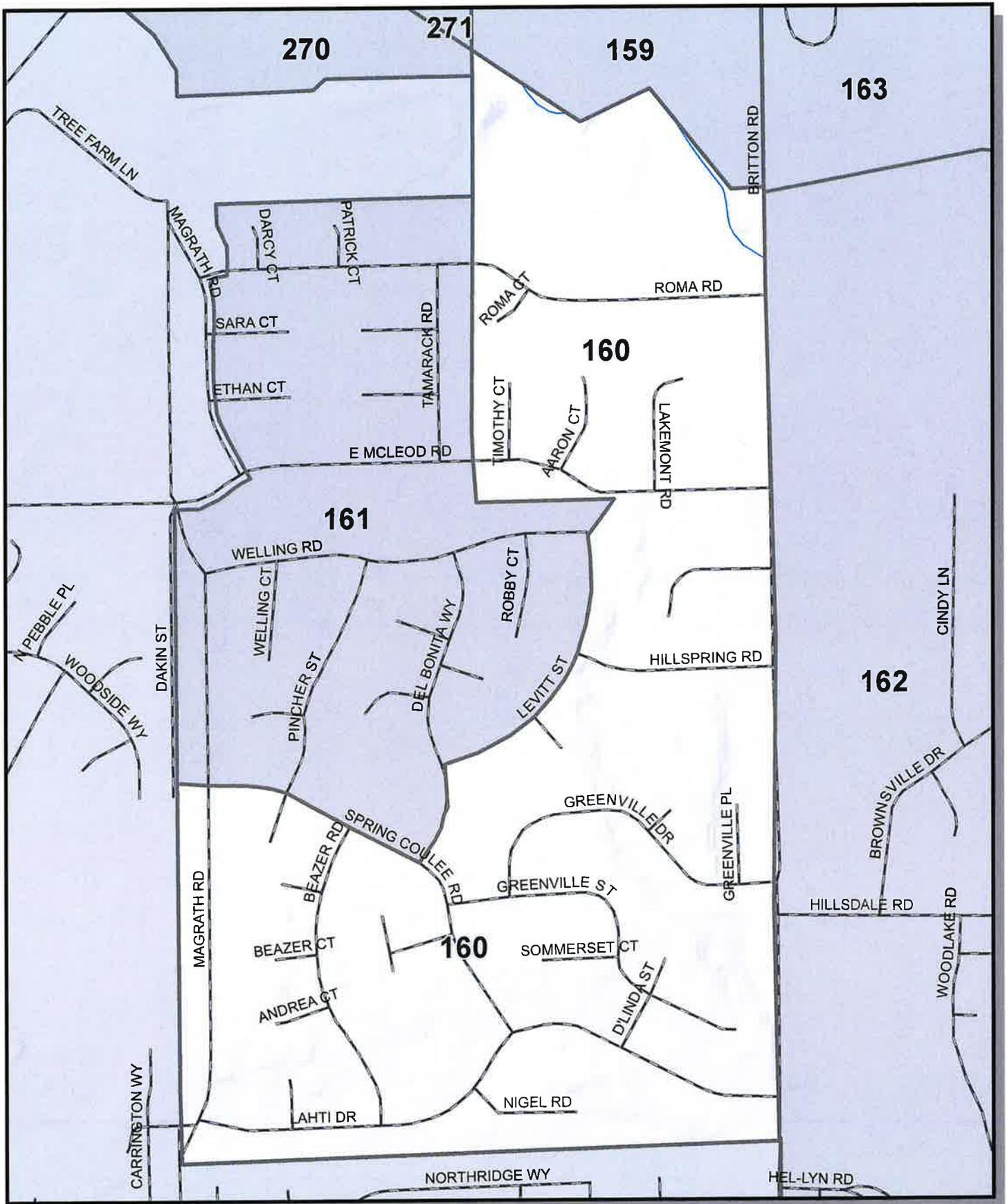


Precinct 271
 Ward 4
 Council District 3
 Leg. District 40
 Cong. District 1



January 2019



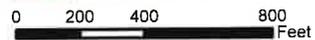


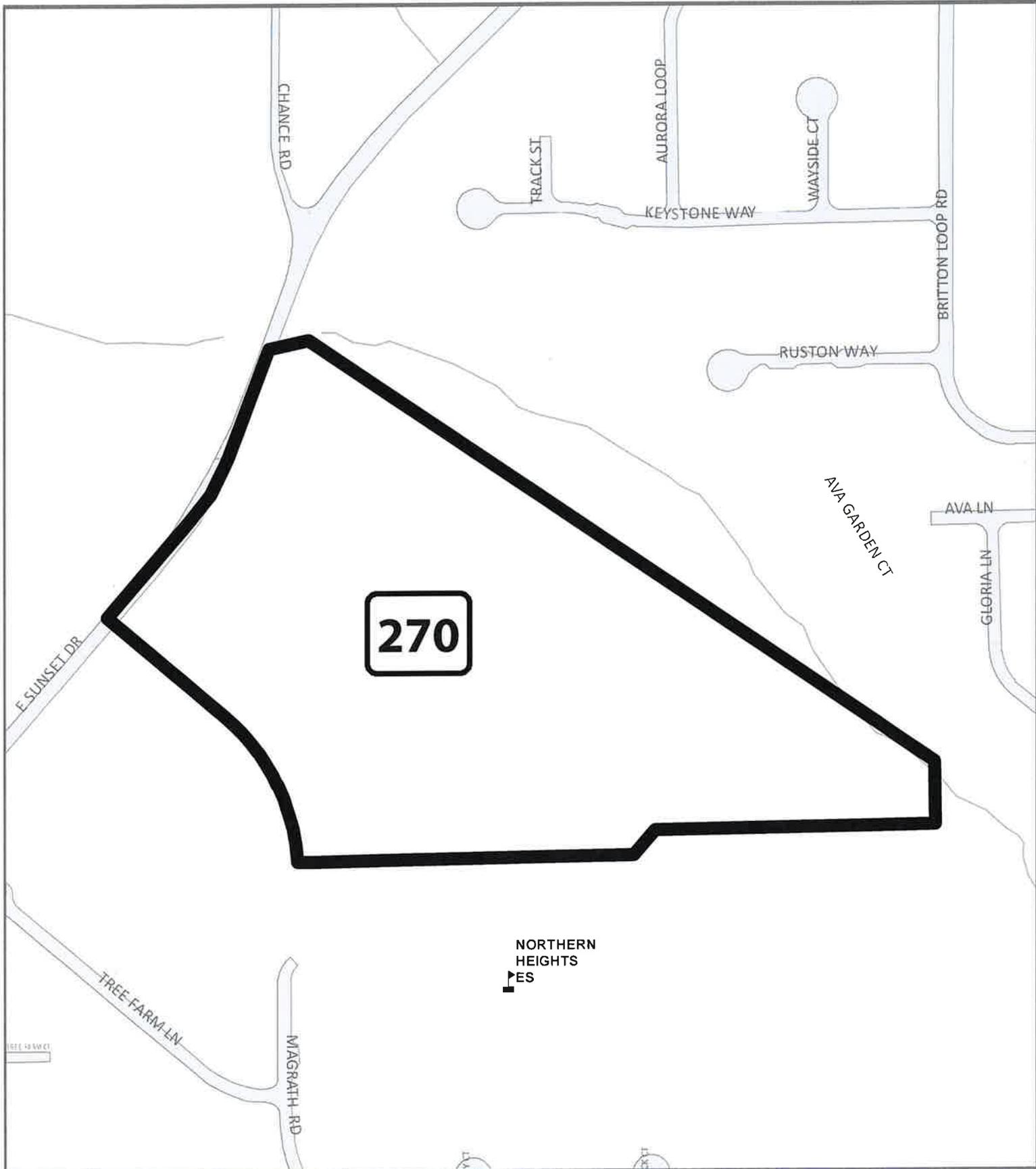
Whatcom County Precinct 160

County Council District 3
 Legislative District 40
 Congressional District 2

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County disclaims any warranty of merchantability or workmanship of this map for any particular purpose, without express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Whatcom County harmless from and against any damage, loss, or liability arising from any use of this map.





270



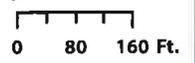
340



Precinct 270
 Ward 4
 Council District 3
 Leg. District 40
 Cong. District 2



January 2019





Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-127

File ID: AB2019-127 **Version:** 2 **Status:** Introduced
File Created: 02/01/2019 **Entered by:** NHanson@co.whatcom.wa.us
Department: Council Office **File Type:** Current Year Council Appointment
First Assigned to: Council
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Appointment to the Whatcom County Planning Commission, applicant must reside in Council District 2, applicants: Robert Bartel, Ria Bordian, Bob Burr, James Hansen, Towhee Wean (the Planning Commission assists the Planning and Development Services Department in carrying out its duties, which include helping to prepare and execute the Comprehensive Plan and making recommendations for adoption of official controls and/or amendments)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Planning Commition has 1 Vacancy - Applicant must be a resident of County Council District 2. Applicants: Robert Bartel, Ria Bordian, Bob Burr, James Hansen, Towhee Wean. The Planning Commission assists the Planning and Development Services Department in carrying out its duties. The Commission also conducts hearings as required under RCW 36.70 and shall make findings and conclusions that will go to the Planning and Development Department and the County Council

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED	Council

Attachments: February 26, 2019 Council meeting applications for appointment

Final Action:
Enactment Date:
Enactment #:

Planning Commission - 1 Vacancy – February 26, 2019 Regular Council Meeting

AB 2019-127

Applicants must be a resident of County Council District 2

The Planning Commission shall assist the Planning & Development Services Department in carrying out its duties, which include helping to prepare and execute the Comprehensive Plan and recommendations to the department for the adoption of official controls and/or amendments.

Applicants: Robert Bartel

Ria Bordian

Bob Burr

James Hansen

Towhee Wean

From: noreply@civicplus.com
Sent: Monday, February 18, 2019 10:27 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.

Title	Mr.
First Name	Robert
Last Name	Bartel
Today's Date	2/18/2019
Street Address	3208 E. Sunset Dr.
City	Bellingham
Zip	98226
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	3602205567
Secondary Telephone	3602205566
Email Address	rmbartel@yahoo.com

Step 2

1. Name of Board or Committee	Planning Commission
-------------------------------	---------------------

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
---	------------

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
---	----

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<u>Bartel, Robert Resume 2018.pdf</u>
--	---

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or	See attached resume
---	---------------------

community activities, and
education

10. Please describe why
you're interested in
serving on this board or
commission

As an Eagle Scout, community service has been an integral part of my life. Besides the many committees I've served on, I've been a builder, an electrician, a business owner, and an active volunteer in Boy Scouts. My personality is quietly observant. My experiences have given me the unique perspective of being in the "middle of the road". I'm able to relate to the many sides of an issue and raise above the emotions and see a clear "big picture". I have an interest in preserving the community and natural beauty that Whatcom County has, having enjoyed them as a parent building memories with my family. I also have an interest in allowing the County to grow in a thoughtful, responsible manner that meets the needs of all while preserving the communities that we all hold dear.

References (please
include daytime
telephone number):

Bob Gay- 360-739-7857 Cindy Austin- 425-258-2644

Signature of applicant:

Robert E. Bartel

Place Signed / Submitted

Bellingham, WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

Robert E. Bartel

3208 East Sunset Drive, Bellingham, WA 98226
(360) 220-5567
rmbartel@yahoo.com

EMPLOYMENT HISTORY

- Northwest Washington Electrical J.A.T.C
Mt. Vernon, WA Training Director 2016-present
- I.B.E.W. Local Union 191 Business Representative/Organizer 2014-1/2016
- Member of I.B.E.W. L.U. 191 Electrician 2008-present
- Bellingham Technical College
Bellingham, WA Adjunct Instructor 2010-2014
- Bellingham Technical College
Bellingham, WA Electrician Tutor 2007
- Santosuosso Electric
Everson, WA Electrical Trainee 2007-2008
- Safe Systems, LLC
Bellingham, WA Electrical Trainee 2006-2007
- "Mister Mom"
Bellingham, WA Stay at home dad and
home school teacher 2001-2002
- Connections SLP, LLC
Bellingham, WA Owner, Supervisor 1999-present
- Bartel Fine Home Improvements
Depew, NY; Coos Bay, OR; Bellingham, WA Owner, Operator 1985-1999

EDUCATION/TRAINING

- NW Washington Electrical Industry JATC
Inside Wireman Program Mt. Vernon, WA 2012
- Bellingham Technical College
A.A.S. Electrician Degree Bellingham, WA 2008
4.0 GPA
- Whatcom Community College
A.A.S. Transfer Degree Bellingham, WA 2008
4.0 GPA
- State University of NY College @ Geneseo
Majoring in Economics/Computer Science Geneseo, NY

Robert E. Bartel

RELATED EXPERIENCES AND ACCOMPLISHMENTS

- **Washington State EL01- Journeyman Electrician and Electrical Administrator**
- **L&I Electrical Program's Technical Advisory Committee (TAC) Member (2017 rulemaking)**
- **IBEW Safety Committee Chairman**

Organize and chair the safety committee for the ~1800 members of I.B.E.W. Local Union 191. Develop agendas, ensure meeting minutes are taken and lead meetings.
- **NWEJATC Apprentice of the Year**

Worked above and beyond the expectations of the instructors, challenging myself to be the best that I can be. I did not intend to let the opportunity of an apprenticeship go to waste.
- **Adjunct Electrical Instructor at Bellingham Technical College**

Experienced preparing lesson plans, creating classroom activities and teaching while keeping students engaged.
- **General Contractor**

Extensive experience in residential construction, project management skills, estimating, budgeting, supervising employees and working collaboratively with other contractors.
- **Program Safety Coordinator**

At BTC, the instructors chose to implement my outline of an organizational system and associated tasks to establish and operate a student led electrician safety program. I took the initiative to develop new systems when the need for improvement was evident. This task required convincing the instructors of the need and then leading a team of 36 students. The students learned what NFPA 70E says and what changes, for safety, in the lab area, needed to be made. It was a large project that took a significant amount of leadership, preplanning and organization to accomplish.
- **Supervisor, Connections Speech Language Pathology (SLP), LLC**

While my wife is a well-respected speech pathologist, she is not business minded. Her desires to help children communicate lead me to develop the largest speech clinic in Whatcom County. I developed and managed all of the business details to grow the clinic from one therapist and a hand full of clients to its current size with fourteen staff members and hundreds of clients.
- **Firefighter / Emergency Medical Services Provider**

This opportunity brought an immense appreciation for safety in all situations and the ability to make critical decisions during stressful, time-sensitive situations. It also required strong listening skills and the ability to empathize with others in challenging circumstances.
- **Boy Scouts of America**

Eagle Scout, Vigil Member of The Order of the Arrow (highest award in the honor society of Boy Scouts); served as Troop Committee Chairman, counselor for Electricity, American Labor and Hiking merit badges. Volunteering for this organization brings me the personal satisfaction of teaching & mentoring young adults.

NaDean Hanson

From: noreply@civicplus.com
Sent: Tuesday, February 19, 2019 10:00 AM
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.

Title	Ms.
First Name	Ria
Last Name	Bordian
Today's Date	2/19/2019
Street Address	3257 Laurelwood Ave
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	3603255660
Secondary Telephone	Field not completed.
Email Address	rbordian@yahoo.com

Step 2

1. Name of Board or Committee	Planning Commission
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
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?	Yes
If yes, please explain	I am an employee at the BP Refinery
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	<u>Planning Commission Position Dist 2.pdf</u>
9. Please describe your occupation (or former occupation if retired),	see attached resume

qualifications,
professional and/or
community activities, and
education

10. Please describe why you're interested in serving on this board or commission see attached resume

References (please include daytime telephone number): Dave Brunner 360-739-4936

Signature of applicant: Ria Bordian

Place Signed / Submitted London, UK (on business)

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

RIA BORDIAN
PLANNING COMMISSION – DISTRICT 2 APPLICATION

EDUCATION

Colorado Technical College

2010 - 2012

BA Business Administration / Project Management

Bellingham Technical College

1990 - 1994

Mechanical Engineering Technology - Associates

Civil Engineering Technology - Associates

WORK EXPERIENCE

BP - Project Manager / Planner / Logistics Coordinator

2000–current

As a Logistics Coordinator I was responsible for managing all logistical planning for the refinery's Turnaround (TA) maintenance events which included coordination of all mobile equipment, contract and BP resources, facility management, transportation, utilities, communications, food, security, and safety zones. Over 10 years I helped establish policies and procedures for Logistics and effectively managed each year's budget. I moved into the role of TA Planner and eventually was the Head Planner for one of our events. I worked closely with Operations to ensure all TA scope was executed safely, on schedule and on budget. As a Planner I facilitated field construction that included cleaning, replacing, repairing and/or installing new process equipment. Much of the work was conducted by specialty contractors in a highly congested and complex environment requiring attention to simultaneous operations and thorough safety plans. As a Planner, I ensured TA contract personnel were trained and followed BP's safety requirements. As a Project Manager over the past four years, I have successfully executed approximately 15 projects ranging from \$50K - \$10M. I am responsible for leading a team of stakeholders through the project lifecycle, developing an execution plan, budget and schedule, and mitigating risks by delivering safe reliable and operational scope. I continue to work closely with the County as permits are required.

ARCO - Document Mgt Supervisor / Auditor

1994–2000

While working at the Cherry Point Refinery under ARCO ownership, I began my career as an Engineering Aide, quickly promoted to Lead Designer, then Supervisor of the Design and Documentation department with a staff of 15. I was responsible for the development of design procedures and standards in support of Projects and Maintenance Reliability. I led the ARCO Design Internship with Bellingham Technical College. My knowledge and experience with digital design applications helped launch ARCO's first electronic records management system, design software and piping database. As a certified ISO 9000 Auditor, I led annual ISO audits on behalf of the refinery assessing compliance with the ISO 9000 standards.

ARCO / BP Emergency Mgt Team Member

1995–current

I was a member of the refinery's Fire Team for five years beginning in 1995. In 1996 I joined the Cherry Point Refinery Oil Spill Response Team. After two years, I became a member of BP's North America Response Team, participating in drills across the continent. I have completed numerous ICS courses and am now part of BP's select Global Response team participating in and offering mentorship at drills worldwide.

COMMUNITY

I am a C.E.R.T. (County Emergency Response Team) member as well as a member of the NW IMT (Incident Mgmt Team) and am trained to respond to any emergency across the U.S. and our County as deemed necessary by each state's Governor. During Hurricane Harvey, I was the Operations Section Chief for one of the Humanitarian Assistance response teams and saw first-hand the devastation of a natural disaster and how response teams can save lives and/or provide relieve from dangerous situations.

As a responder, I continue to keep my skills, knowledge and techniques updated through courses offered by agencies such as the Coast Guard and other Response organizations. I have participated in special interest groups that are focused on improving

RIA BORDIAN
PLANNING COMMISSION – DISTRICT 2 APPLICATION

response strategies, such as DoE's Worldwide Response Resource List that was developed to assist in tracking resources during an event. This tool is now considered an essential during any response that requires resource tracking.

Supporting Whatcom County's United Way and other charitable organizations is very important to me as well. My Mom was a single parent and enrolled my brother and I in UW after school programs while she worked three jobs. I know the benefits of having had that support and as soon as I was old enough, I've been giving back to my community. In 1999, my employer provided me an opportunity to be a UW Loaned Executive. It was the most enriching and rewarding experience of my life. I have been contributing to UW since 1994 but became a Leadership Giver in 1999. I also advocate for the Whatcom Humane Society and was a member of the Board for a short period. I have volunteered as a girls soccer coach, participated in STEM programs, and mentored individuals on life skills including developing budgets and wisely managing limited incomes. I believe it's important to give back to our community.

PLANNING COMMISSION INTEREST

I have been a Whatcom County resident since 1989 and this community is important to me. I care about the neighborhoods, the environment, businesses, schools, urban growth, wildlife, and all the important issues that will decide the future for Whatcom County's residents. There are many important issues being considered as part of this County's Planning Commission and Council. I believe my non-partisan view and ability to bring differing opinions together in creating a collaborative compromise that achieves the goals of our residents would be an asset on this Commission. I do not want to see our community become as divided as our nation appears to be. I believe every Whatcom County resident wants a healthy environment, good employment opportunities, safe neighborhoods, and the ability to provide a strong community for future generations. I would appreciate the opportunity to play a role as a member of the Planning Commission in shaping our community as it embarks on a future of alternative energies, new technologies, creative housing solutions and responsible welfare for our citizens. This position would provide me an opportunity to give back to my community in a new capacity and help the commission achieve its objectives and deliver what is most important to our residents.

From: noreply@civicplus.com
Sent: Monday, January 28, 2019 9:29 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.

Title	Mr.
First Name	Bob
Last Name	Burr
Today's Date	1/28/2019
Street Address	3350 Bellevue Pl
City	Bellingham
Zip	98226
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	3609220391
Secondary Telephone	3606717813
Email Address	burrreasear@aol.com

Step 2

1. Name of Board or Committee	Planning Commission
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
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
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	I ran my own national research and consulting practice serving the financial services industry from 1994 when I moved to Bellingham until 2007 when I retired. Prior to that was VP of Research and Development at Prudential Insurance in NJ. For many years at Prudential, I was in charge of both short term

community activities, and education

planning/budgeting and budgeting. I am an experienced planner at the Corporate level and I am gifted at analysis, but more importantly at synthesis. I CARE deeply about the future of life on earth, and would like to act locally to chart our destiny. I graduated from UC Berkeley with high honors and an ABD from Claremont Graduate University. I have been as community activist since my retirement in 2007. I have run for office 4 times, never accepting a dime from anyone because I believe that the influence of money in politics is the root of our not addressing the societal ills that need to be addressed. While I am a former State Vice Chair of The Green Party and a former Vice Chair of the 40th LD Dems and former State Committee Representative of the 42nd LD Dems, I am also a very active member of the Libertarian Party and was active in the Tea Party as well. While regarded mostly as a lefty, I am not. I am an activist issues person and do my damnest to fight for the issues I believe in whether it be reducing the national debt or combating the spectre of climate change.

10. Please describe why you're interested in serving on this board or commission

Two words: I Care Beyond that, I believe my skill set is needed in a County that has done too little to seriously PLAN for the future.

References (please include daytime telephone number):

Every member of the county council knows me; so, I don't need any outside references. If you do, contact Gene Knudsen, Terry Bornemann, Pinky Vargas or any of the other former members of the City and County Councils

Signature of applicant:

Robert L Burr

Place Signed / Submitted

Bellingham, WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

NaDean Hanson

From: noreply@civicplus.com
Sent: Monday, February 11, 2019 12:45 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.

Title	Mr.
First Name	James
Last Name	Hansen
Today's Date	2/11/2019
Street Address	2418 Keesling 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	3606768014
Secondary Telephone	3604101991
Email Address	jh_mk1234@msn.com

Step 2

1. Name of Board or Committee	Planning Commission
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
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
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	I'm retired from managing a salmon habitat restoration program for Lummi Nation. Other previous careers were in Forestry, Construction Contracting, Mental health and Social Work. I am past President of the Nooksack Recovery Team and the Brigid Collins House public service non-profits. Have been a member

community activities, and education of the Marine Resources Committee for sever years and serve on the WRIA1 Environmental Caucus.

10. Please describe why you're interested in serving on this board or commission I would like to support a Smart Planning prospective that balances the needs of our growing population with preserving the natural environment that is the foundation of our prosperity.

References (please include daytime telephone number): Rod Burton (Graphic Artist) 360 671-0156 Peter Stark (WTA Director) 360 676-7433 Pam Borso (Custer Post Master - Retired) 360 319-9004

Signature of applicant: James E. Hansen

Place Signed / Submitted Bellingham WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

From: noreply@civicplus.com
Sent: Tuesday, February 19, 2019 9:58 AM
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.

Title	Mrs.
First Name	Towhee
Last Name	Wean
Today's Date	2/19/2019
Street Address	2320 Williams 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	360 714-9517
Secondary Telephone	3607149517
Email Address	towheewean@hotmail.com

Step 2

1. Name of Board or Committee	Planning Commission
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
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
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	At this point in my life I am a stay at home mom with an interest in politics and the environment. I am a local lady born and raised. I have a Biology degree from WWU. Before I became a mother I took over my father's masonry business. I have served on the Riveters Collective board and Childrens Co-op

community activities, and
education

Preschool board.

10. Please describe why
you're interested in
serving on this board or
commission

I have another year to be home with my daughter before I have to return to the workforce. I would like to use that time to help Whatcom County move forward. Climate change is a threat to my children's future. I want to do everything I can to mitigate that threat.

References (please
include daytime
telephone number):

Elizabeth Harstoch 360 305-5624 Nolan Froyon 360 296-5034
Gerry Coleman 360 319-7585 Pippin Christiansen 360 920-
9163

Signature of applicant:

Towhee Wean

Place Signed / Submitted

Bellingham, WA

(Section Break)

Email not displaying correctly? [View it in your browser.](#)



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-129

File ID: AB2019-129 **Version:** 2 **Status:** Introduced
File Created: 02/01/2019 **Entered by:** NHanson@co.whatcom.wa.us
Department: Council Office **File Type:** Current Year Council Appointment
First Assigned to: Council
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Appointment to the Sumas/Everson/Nooksack Flood Control Sub-Zone Advisory Committee - Applicant: Larry Mades (the committee is an integral part of the program reviewing the comprehensive plan for flood control)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Appointment to fill vacancy on the Sumas/Everson/Nooksack Flood Control Sub-Zone Advisory Committee - Applicant: Larry Mades. The committee is an integral part of the program reviewing flood control.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
02/12/2019	Council	INTRODUCED	Council

Attachments: Applications Feb. 26th

Final Action:
Enactment Date:
Enactment #:

Sumas Flood Control
Sub-Zone



RECEIVED

JAN 28 2019

WHATCOM COUNTY
COUNCIL

COUNCILMEMBERS:
Timothy Ballew II
Barbara E. Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Satpal Sidhu

APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: LARRY E MADES Date: 1/25/19
Street Address: 7689 OAT COLES RD
City: EVERCON Zip Code: 98247
Mailing Address (if different from street address): _____
Day Telephone: _____ Evening Telephone: _____ Cell Phone: 360-966-3333
E-mail address: tigger322z@gmail.com

- Name of board or committee-**please see reverse**: Sumas/evercon/nooksack
- You must specify which position you are applying for.
Please refer to vacancy list. FLOOD CONTROL SUB-ZONE
- Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?
(If applicable, please refer to vacancy list.) ----- yes () no
- Which Council district do you live in? ----- () One () Two Three () Four () Five
- Are you a US citizen? ----- yes () no
- Are you registered to vote in Whatcom County? ----- yes () no
- Have you ever been a member of this Board/Commission? ----- yes () no
If yes, dates: SINCE APPROX. 2001
- 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? ----- () yes no
If yes, please explain: _____
- Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? ----- () yes no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
RETIRED - COMMERCIAL PRINTING - MASTERS DEGREE IN PRINTING MGMT.

11. Please describe why you're interested in serving on this board or commission: LIVE IN AFFECTED AREA OF SWIFT CREEK

References (please include daytime telephone number): ED BOSSCHER (CHAIR OF THIS COMMITTEE) 360-815-7336

Signature of applicant: [Signature]

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information 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.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-139

File ID: AB2019-139 **Version:** 1 **Status:** Agenda Ready

File Created: 02/13/2019 **Entered by:** SMildner@co.whatcom.wa.us

Department: County Executive's Office **File Type:** Executive Appointment

First Assigned to: Council

Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Request confirmation of Executive's appointment of Brian Rusk to the Whatcom County Purchase of Development Rights Oversight Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached application

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: PDR application Rusk 02-08-19.

Final Action:
Enactment Date:
Enactment #:



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	Dr.
First Name	Brian
Last Name	Rusk
Today's Date	2/8/2019
Street Address	1779 E Smith Rd
City	Bellingham
Zip	98226
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	<i>Field not completed.</i>
Primary Telephone	360-510-7161
Secondary Telephone	<i>Field not completed.</i>
Email Address	dirtfarmer@wildacres.farm
1. Name of Board or Committee	Purchase of Development Rights Oversight Committee
Purchase of Development Rights Oversight Committee Position:	County Farmer
2. Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying?	Yes
3. Which Council district do you live in?	District 3
4. Are you a US citizen?	Yes

5. Are you registered to vote in Whatcom County?	Yes
6. Have you declared candidacy (as defined by RCW 42.17A.055) for a paid elected office in any jurisdiction within the county?	No
7. Have you ever been a member of this Board/Commission?	No
8. Do you or your spouse have a financial interest in or are you an employee or officer of any business or agency that does business with Whatcom County?	No
You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions	Rusk CV Jan 2019.pdf – (available on request)
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	I am currently a part-time, small-scale poultry farmer in Whatcom County. I am also a part-time teacher and research associate in the Geology Department at WWU and the University of Oregon. I am currently serving my third term as president of the board of Whatcom Hills Waldorf School, a local, non-profit pre-K through 8th grade school. I am in the process of expanding my farm from poultry and pork production to include year-round greenhouse veggie production. I lived in the region for 8 years-4 years in Fairhaven prior to moving to the county where I have lived for the past almost 4 years. I obtained my BS from James Madison University in Harrisonburg, VA, and my PHD from University of Oregon in 2003. My expertise is in the geology of Earth Resources. My path to becoming a “sustainable” farmer in Whatcom county has evolved from background in Earth Resources. Land and water are some of our most critical resources for the present and future. All of these experiences combined give me the interest and qualifications to serve on this committee.
10. Please describe why you’re interested in serving on this board or commission	My background in Earth Resources leads me to consider the origin of all resources humans use from mineral resources to energy, land, and water resources. It is clear that there are competing interests for use of all of these resources, whether for development or recreation, or agriculture, or for the extractive industries. I believe we need to protect good agricultural land from development. I also believe that we need to protect not just agricultural land, but also we need to keep more places wild and free and available for habitat for Whatcom County’s native birds and other species. I think I have a lot to learn about our local government and business interests in the county, and I am interested in contributing my time and efforts to helping to keep this important development-rights-purchasing committee rolling and operating smoothly in the coming years.
References (please include daytime telephone number):	Chris Elder, 360-778-5932
Signature of applicant:	Brian Rusk
Place Signed / Submitted	Bellingham WA



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-143

File ID: AB2019-143 Version: 1 Status: Agenda Ready
File Created: 02/14/2019 Entered by: SMildner@co.whatcom.wa.us
Department: County Executive's Office File Type: Executive Appointment

First Assigned to: Council

Agenda Date: 02/26/2019 Next Mtg. Date: Hearing Date:

TITLE FOR AGENDA ITEM:

Request confirmation of Executive's appointment of Rachel Arnold to the Whatcom County Marine Resources Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached memorandum and application

HISTORY OF LEGISLATIVE FILE

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

Attachments: Staff-recommendation-021119, MRC app-resume Arnold

Final Action:
Enactment Date:
Enactment #:

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

Jon Hutchings
Director



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

TO: The Honorable Jack Louws, County Executive
THROUGH: Jon Hutchings, Director *Handwritten initials*
FROM: Gary S. Stoyka, Natural Resources Manager *Handwritten initials*
Austin Rose, Planner I
RE: Marine Resources Committee appointment recommendations
DATE: February 11, 2019

RECEIVED
FEB 13 2019
JACK LOUWS
COUNTY EXECUTIVE

There are currently two vacancies on the Marine Resources Committee (MRC). Applicant positions include: a Conservation/Environmental interest, and an Economic interest. The Executive's Office forwarded three applications for the MRC to review which included: one application from Ms. Rachel Arnold to fulfill a Conservation-Environmental interest position, one from Ms. Natalie Coleman to fulfill a Scientific interest position, and one from Mr. Colin Wahl to fulfill a Conservation-Environmental interest position. A recommendation was requested from the Executive's Office for the most appropriate applicants on file for the open positions.

The MRC recommends the appointment of Ms. Rachel Arnold to represent a Conservation-Environmental interest to the MRC. Ms. Arnold has experience with researching the population dynamics of forage fishes of the Salish Sea and outreach activities with the local community related to marine conservation. The MRC is currently conducting forage fish spawning surveys within Whatcom County and hoping to expand that project as more knowledge and volunteer capacity is available to the MRC. Ms. Arnold's commitment to conservation of the marine environment, education and outreach, and monitoring projects are important assets to the committee. *ok. 41*

Mr. Wahl and Ms. Coleman are not recommended to join the committee at this time due to lack of experience that would be complementary to MRC work. Those applicants will be contacted to discuss their interest in the MRC, and it is hoped they will consider serving on a subcommittee to gain experience with projects the MRC pursues.

The MRC does not have a recommendation for a candidate to fill the open Economic interest position at this time. The position will continue to be advertised on the MRC website and it is hoped that a suitable candidate will be identified as more applications are submitted and reviewed.

If you have any questions regarding this recommendation, please contact Austin Rose at extension 6286



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	Rachel
Last Name	Arnold
Date	1/14/2019
Street Address	2223 Electric Avenue
City	Bellingham
Zip	98229
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	<i>Field not completed.</i>
Primary Telephone	2068519377
Secondary Telephone	<i>Field not completed.</i>
Email Address	frogfishes@gmail.com
1. Name of Board or Committee	Marine Resource Committee
Marine Resource Committee Position:	Conservation/Environmental Interest
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
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

You may attach a resume or detailed summary of experience, qualifications, & interest in response to the following questions

CV RA.pdf - attached

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I conduct research on population dynamics of forage fishes of the Salish Sea at the Salish Sea Research Center at Northwest Indian College. My PhD is from the University of Washington, School of Aquatic and Fishery Sciences. The Salish Sea Research Center does many outreach activities with the local community, especially the area tribes, related to marine conservation.

10. Please describe why you're interested in serving on this board or commission

My work is centered on the understanding and conservation of the marine environment. My work also includes networking with local non-profits and governmental agencies to identify projects that would be beneficial to food sovereignty and clean water for the Lummi people and all local residents of the Coast Salish bioregion.

References (please include daytime telephone number):

Dr. Misty Peacock (Director of the Salish Sea Research Center): 360-594-4082
Dr. Marco Hatch (WWU): 206-403-8566

Signature of applicant:

Rachel Arnold

Place Signed / Submitted

Bellingham, WA

RACHEL J. ARNOLD, PHD
Northwest Indian College
Associate Director, Salish Sea Research Center
2522 Kwina Road, Bellingham, WA 98226
(206) 851 9377 • frogfishes@gmail.com

EDUCATION

Ph.D., School of Aquatic and Fishery Sciences, University of Washington—Seattle, Washington, 2014

M.S., School of Aquatic and Fishery Sciences, University of Washington—Seattle, Washington, 2010

B.Sc., Biology and Philosophy, University of Wisconsin Eau Claire—Eau Claire, Wisconsin, 2002–2004

University of Southern Mississippi, Gulf Coast Research Laboratory Summer Program—Ocean Springs, Mississippi. June–August, 2002–2004

University of Wisconsin Madison—Madison, Wisconsin, 2000–2001

University of Wood County—Marshfield, Wisconsin (High School Running Start Program), 1999–2000

POSITIONS

Associate Director, Salish Sea Research Center, Northwest Indian College, Bellingham, WA, August 2018—present.

Faculty, Native Environmental Science Program, Northwest Indian College, Bellingham, WA, September 2015–August 2018.

Research Assistant, Groundfish Observer Program, National Marine Fisheries Service, through the School of Aquatic and Fishery Sciences, University of Washington. Seattle, WA, October 2011–August 2014.

Research Assistant, Ichthyology Collection at the Burke Museum of Natural History and Culture, University of Washington. Seattle, WA, June 2005–September 2011.

Vice-President, Gilbert Ichthyological Society, 2010.

Secretary, Gilbert Ichthyological Society, 2010–2013.

GRANTS

Restoring the Salish Sea: Food Sovereignty and Clean Water in the Pacific Northwest (Co-PI). NSF

1840199. Awarded, \$2,998,523.

From Mountain to Sea: Creating a Culturally Relevant, Multi-Faceted Summer Science Program to Facilitate a Community of Learners at the Salish Sea Research Center (grant writer). NSF-1812474. Awarded, \$499,998.

National Science Foundation, Small Grants for Research (SGR), Developing a Quantitative Real-Time PCR (qrt-PCR) Assay to Identify and Quantify Harmful Algal Bloom (HAB) Phytoplankton Species in the Salish Sea (PI). NSF 16-531. Declined, \$200,001.

National Science Foundation, Scholarships in Science, Technology, Engineering, and Mathematics Program (S-STEM), Building our net: fostering resilient Indigenous scientists and increasing undergraduate retention in the STEM field through scholarships and mentoring (Co-PI). NSF-1644271, Awarded \$998,771.

NASA MUREP for American Indian and Alaskan Native STEM Engagement (MAIANSE), Northwest Future Indigenous Scientists and Engineers (NW-FISE) (Co-PI), NNH16ZHA0099N-MAIANSE, Awarded, \$272,000.

National Science Foundation SEA-PHAGES Tribal Colleges and Universities Program, Science Education Alliance-Phage Hunters Advancing Genomics and Evolutionary Science (SEA-PHAGES) at Northwest Indian College (NWIC) (Co-PI), NSF 16-531, Awarded \$299,996.

Department of Defense, Equipment, Research and Education Program for Historically Black Colleges and Universities and Minority Serving Institutions, Equipment and instrumentation for the molecular and analytical chemistry laboratory in the Salish Sea Research Center: promoting STEM student research at Northwest Indian College (PI). DoD W911NF-16-R-0024, Declined \$570,938.

National Science Foundation, Small Grants for Research (SGR), Assessing population size and structure of the Longfin Smelt (*Spirinchus thaleichthys*) in the Nooksack River (PI). NSF-1622492, Awarded \$199,936.

TEACHING EXPERIENCE

Instructor

Northwest Indian College, Bellingham, WA

Introduction to Biology, BIOL 101

2015–2018

- Taught introductory biology lecture and laboratory for environmental science majors and non-majors
- Prepared course material, quizzes, laboratories, and supplementary materials
- Led field exercises; incorporated HHMI's SEA-PHAGES program for laboratories
- Administered and graded quizzes and exams

Marine Biology, BIOL 103

2015–2016

- Taught marine biology lecture and laboratory for environmental science majors and non-majors

- Prepared course material, quizzes, laboratories, and supplementary materials
 - Led field exercises
 - Administered and graded quizzes and exams
- Animal Biology, BIOL 203* 2015–2018
- Taught animal biology lecture and laboratory for environmental science majors
 - Prepared course material, quizzes, laboratories, and supplementary materials
 - Led dissection laboratories
 - Administered and graded quizzes and exams
- Ecology, BIOL 310* 2017– 2018
- Prepared course and supplementary materials
 - Administered and graded research papers
- Genetics and Evolution, BIOL 344* 2016–2019
- Developed a new introductory genetics and evolution course for environmental science majors
 - Designed problem-based laboratory exercises
 - Prepared course material, quizzes, discussion sessions, and supplementary materials
- Aquatic Ecology, ENVS 430* 2015–2018
- Taught aquatic ecology lecture and laboratory for environmental science majors
 - Prepared course material, quizzes, laboratories, and supplementary materials
 - Led stream-based field exercises
 - Administered and graded quizzes and exams
- Ecology of the Salish Sea, ENVS 440* 2015–2018
- Taught ecology of the Salish Sea lecture and laboratory for environmental science majors
 - Prepared course material, quizzes, laboratories, and supplementary materials
 - Led marine-based field exercises and aided with boat safety and transportation
 - Administered and graded quizzes and exams

Academic Tutor

North Seattle College, Seattle, WA

- Anatomy and Physiology I & II, BIOL 241 and 242 for non-traditional students* 2015
- Report to HEET team coordinators on student success
 - Develop strategies for improving student learning
 - Provide individual tutoring sessions
 - Organize and facilitate group tutoring and review sessions
 - Administer iClicker sessions
 - Attend and aid students in lecture and laboratory

Graduate Teaching Assistant

Alaska Resource Ecology and Fisheries Management Division, Alaska Fisheries Science Center,
NOAA/NMFS, Seattle

- Fish Identification Trainer for North Pacific Groundfish Observer Program* 2011–2014
- Trained personnel on the identification of North Pacific Groundfishes
 - Updated instructional materials and identification resources
 - Verified in-field identifications of fishes returned to the center

University of Washington, School of Aquatic and Fishery Sciences



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-144

File ID: AB2019-144 **Version:** 1 **Status:** Agenda Ready

File Created: 02/14/2019 **Entered by:** SMildner@co.whatcom.wa.us

Department: County Executive's Office **File Type:** Executive Appointment

First Assigned to: Council

Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Request confirmation of Executive's appointment of Patrick Alesse to the Whatcom County Bicycle-Pedestrian Advisory Committee

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached application

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:

Attachments: BPAC applicant Alesse 12-05-18.pdf

Final Action:
Enactment Date:
Enactment #:



RECEIVED

DEC 6 - 2018

COUNCILMEMBERS:
Timothy Ballew II
Barbara E. Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Satpal Sidhu

JACK LOUWS
COUNTY EXECUTIVE

APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS

PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Patrick Aless Date: December 5, 2018
Street Address: 4825 Alderson Road
City: Birch Bay Zip Code: 98230
Mailing Address (if different from street address): _____
Day Telephone: 360-371-2070 Evening Telephone: Same Cell Phone: 360-223-6571
E-mail address: CShop@birchbay.net

- Name of board or committee-please see reverse: Bicycle/pedestrian Advisory Committee
- You must specify which position you are applying for. Please refer to vacancy list.
- Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) yes () no
- Which Council district do you live in? () One () Two () Three () Four Five
- Are you a US citizen? yes () no
- Are you registered to vote in Whatcom County? yes () no
- Have you ever been a member of this Board/Commission? yes no
If yes, dates: none
- 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? () yes no
If yes, please explain: _____
- Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? () yes no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

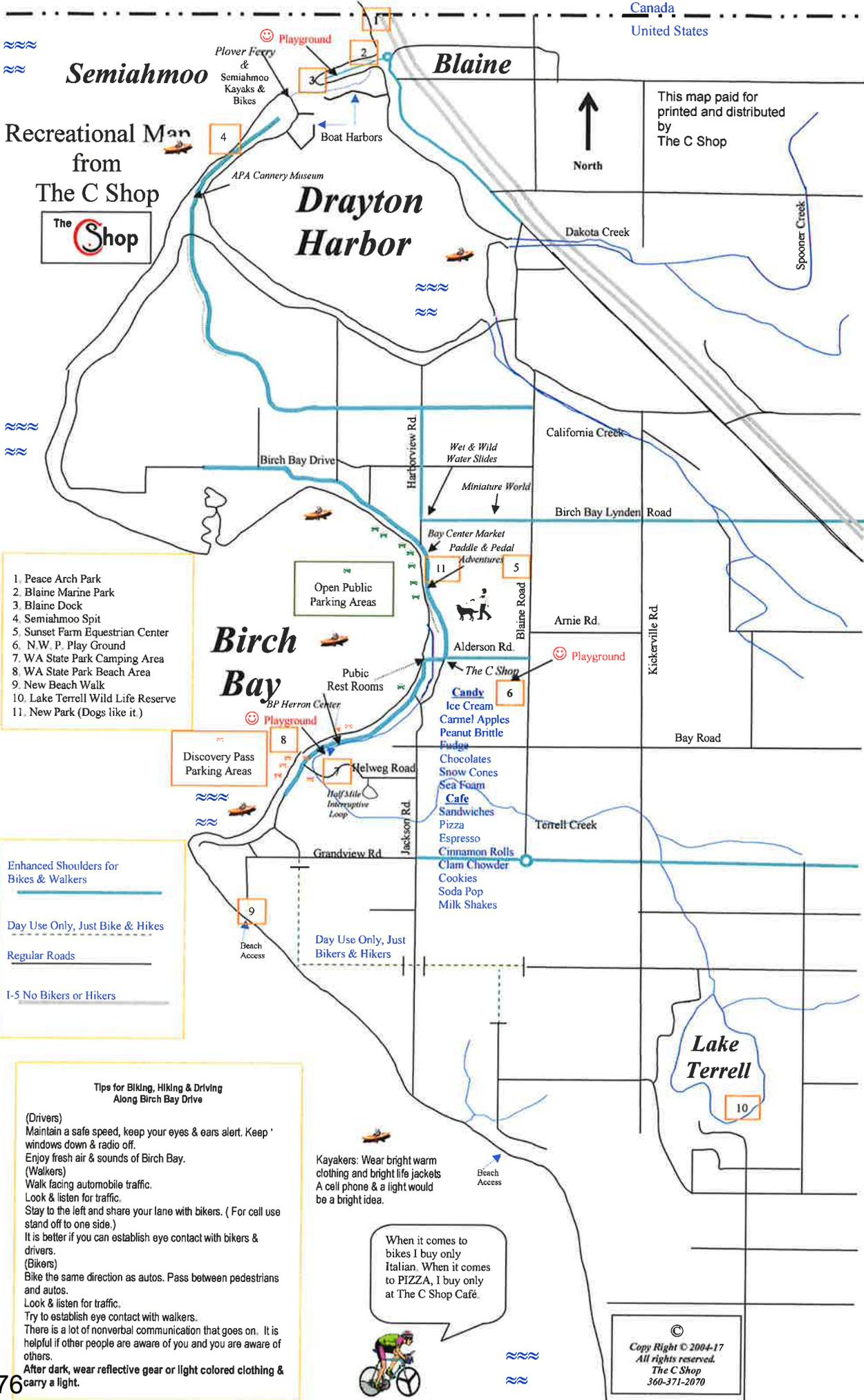
10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
BS Degree, BB W/S board member, Business at Birch Bay
Retired teacher - Blaine School District

11. Please describe why you're interested in serving on this board or commission:
walking, Hiking & B. King are important for recreation & getting around.
I have included two maps that I have published for years.

References (please include daytime telephone number): _____

Signature of applicant: Patrick Aless

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information 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.



This map paid for printed and distributed by The C Shop

Recreational Map from The C Shop

1. Peace Arch Park
2. Blaine Marine Park
3. Blaine Dock
4. Semiahmoo Spit
5. Sunset Farm Equestrian Center
6. N.W. P. Play Ground
7. WA State Park Beach Area
8. WA State Park Beach Area
9. New Beach Walk
10. Lake Terrell Wild Life Reserve
11. New Park (Dogs like it)

Enhanced Shoulders for Bikes & Walkers

Day Use Only, Just Bike & Hikes

Regular Roads

I-5 No Bikers or Hikers

Tips for BIKING, HIKING & DRIVING Along Birch Bay Drive

(Drivers)
Maintain a safe speed, keep your eyes & ears alert. Keep windows down & radio off.
Enjoy fresh air & sounds of Birch Bay.

(Walkers)
Walk facing automobile traffic.
Look & listen for traffic.
Stay to the left and share your lane with bikers. (For cell use stand off to one side.)
It is better if you can establish eye contact with bikers & drivers.

(Bikers)
Bike the same direction as autos. Pass between pedestrians and autos.
Look & listen for traffic.
Try to establish eye contact with walkers.
There is a lot of nonverbal communication that goes on. It is helpful if other people are aware of you and you are aware of others.
After dark, wear reflective gear or light colored clothing & carry a light.

Kayakers: Wear bright warm clothing and bright life jackets
A cell phone & a light would be a bright idea.

When it comes to bikes I buy only Italian. When it comes to PIZZA, I buy only at The C Shop Café.



©
Copy Right © 2004-17
All rights reserved.
The C Shop
360-371-2070

Welcome to Birch Bay Business Map for Visitors

♥ Birch Bay ♥

Accommodations

Birch Bay Get Away	371-3730
Driftwood Inn Motel	371-2620
Sand Castle at Birch Bay	371-4900
Vacationville	371-5611
Ball Bay View RV	371-0334
Beachcomber RV	371-3633
Beachside RV	371-5962
Edgewater RV	371-2684
Thousand Trails RV	371-7432
Birch Bay State Park	371-2800
Lighthouse RV	371-5603
Birch Bay RV Resort	371-7922
You could check cshopcandy.com/accommodations.htm	

I-5

I-5

Semiahmoo
Resort area

The drinking water in Blaine, Semiahmoo & Birch Bay is great. (If you are renting a unit that has not been used for a few days, let the cold water run 4 minutes on your first day of rental use.)

North

Shintaffer Rd

Harborview Rd.

Lincoln Road

Birch Point Rd.

S Summer Season
Businesses

Family
Medicine
&
Coast
Physical
Therapy

Starvin Sam's Gas

S Wet & Wild
Water Slides

Available
360-527-8901

S Miniature World
Go Kart, Mini Golf



Learn About
Birch Bay

More Shopping at
Birch Bay Square

Exit 270
5 miles to
The C Shop
14 miles from
Bellingham

Lynden ➔

Visitor's
Center
371-5004

Open Public
Parking Areas
Mutt Mitt
Station

Birch Bay

Kayakers: Wear bright warm clothing and bright life jackets. A cell phone & a light would be a bright idea.

Birch Bay State Park
(Pass or Parking Fee)
(Gates Close at 10:00)

State Park
Public Parking
Discovery Pass
Required

This map & tide tables
paid for, printed, and
distributed by
The C Shop
Need more?
360-371-2070

CJ's Beach House
Restaurant
S Bike & Kayak
Rental
Liquor Store
Canine Divine
Bay Breeze

Escape Day Spa & Hair Care

Hidden Treasures
S Rest Rooms

S Public Market

S Primrose Lane
Gift Shop

Driftwood Inn &
Gift Shop

Heron Center
Playground
Rest Rooms
& Showers

Boat Launch

Half Mile
Interpretive
Loop

Cherry Pt.
Aquatic Reserve Park

Pt White Horn Rd

Karper Rd.

Bay Center Market
Birch Bay Teriyaki

The Beach Lounge &
Boardwalk Restaurant

Shores Restaurant

S Beach Shack
Gift Shop

The Bridge

Alderson Rd.

S The C Shop

Home Made Candy Shop
&
Café Bakery-Pizza

Jackson Road

Bay Road

Helweg Road

Beachwood
Store, Gas
& Laundromat

The C Shop

Open weekends
Mothers Day
Open Daily
Fathers Day
to Labor Day
Hours 11:00 to 10:00
TheCShop.com

Pleasant
Valley
Farmers
Market

Pleasant
Valley
Farm
Cheese

Grandview Rd.

Blaine

Birch Bay Lynden Road

Toad's Chevron Gas

Home Farm
U Pick



Mutt Mitt
Station

Kickerville Rd.

Arnie Rd.

Birch Bay
Area

Playground
Park & Rec. Dist.

Terrell Creek Landing

1. New Réstraint coming

2. New Mail & Parcel coming

3. Katie's Corner

4. Essence Salon & Spa

Tips for Biking, Hiking & Driving Along Birch Bay Drive

(Drivers)
Golf Carts-New, (They are just learning.)
Maintain a safe speed, keep your eyes & ears alert. Keep windows down & radio low.
Enjoy fresh air & sounds of Birch Bay.
(Walkers)
Walk facing automobile traffic.
Look & listen for traffic.
Stay to the left and share your lane with bikers. (For cell use stand off to one side.)
It is better if you can establish eye contact with bikers & drivers.
(Bikers)
Bike the same direction as autos. Pass between pedestrians and autos.
Look & listen for traffic.
Try to establish eye contact with walkers.
There is a lot of nonverbal communication that goes on. It is helpful if other people are aware of you and you are aware of others.
After dark, wear reflective gear or light-colored clothing & carry a light.

Copy Right © 2018
All rights reserved.
(2003-18)
The C Shop
360-371-2070

This map is not to scale.
Bellingham ➔

Vista Drive
Ferndale
I-5
Exit 266
7.7 miles to
The C Shop
10 miles from
Bellingham

The C Shop

The C Shop Is

"A Whale of a Place to Go!!"

371-2070

Scrumptious Homemade!

♥ Candy

♥ Pizza

♥ Bakery

♥ Sandwiches

♥ Espresso

♥ Ice Cream Cones



The C Shop Candy Shop & Café closed for the season at 10:00 on Labor Day Monday, September

So

Visit our Friends across the way.

@

Birch Bay Café
Open Friday through Monday
8:00 to 2:00

Carol and Ashley will have Chowder, Hot Dogs, Hot Cheese Sandwiches, Espresso, Hot Chocolate, and even Ice Cream & Cookies for you.

- ♥ Candy Carmel, Fudge, Chocolate, Carmel Corn, Peanut Brittle, C Foam
- ♥ Pizza Brick Oven Baked, Our own Homemade Sauce & Grated Cheese
- ♥ Bakery Fresh Ground Organic Whole Wheat, Cinnamon Rolls,
- ♥ Sandwiches On Fresh Baked Bread, Fresh sliced Meat & Cheese, Salads,
- ♥ Espresso Roasted & ground here. Regular Drip, Iced Coffees
- ♥ Ice Cream Cones Several Flavors Waffle Cones, Milk Shakes, Sundaes and Snow Cones

www.theshop.com



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-147

File ID: AB2019-147 **Version:** 1 **Status:** Agenda Ready
File Created: 02/14/2019 **Entered by:** MCaldwel@co.whatcom.wa.us
Department: Finance Division **File Type:** Ordinance
First Assigned to: Council
Agenda Date: 02/26/2019 **Next Mtg. Date:** **Hearing Date:**

TITLE FOR AGENDA ITEM:

Ordinance amending the 2019-2020 Whatcom County Budget, request no. 3, in the amount of \$95,521

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #3 requests funding from the General Fund:

1. To appropriate \$95,521 to fund CASA program expansion and additional FTE from grant proceeds.

HISTORY OF LEGISLATIVE FILE

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

Attachments: Amendment No 3 of 2019 budget.pdf

Final Action:
Enactment Date:
Enactment #:

**ORDINANCE NO.
AMENDMENT NO. 3 OF THE 2019 BUDGET**

WHEREAS, the 2019-2020 budget was adopted November 20, 2018; and,
WHEREAS, changing circumstances require modifications to the approved 2019-2020 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 2019-2020 Whatcom County Budget Ordinance #2018-064 is hereby amended by adding the following additional amounts to the 2019 budget included therein:

Fund	Expenditures	Revenues	Net Effect
General Fund			
Superior Court - Juvenile	95,521	(95,521)	-
Total Supplemental	95,521	(95,521)	-

In addition, Exhibit C – Position Control Changes should be amended to add 1 FTE CASA Volunteer Coordinator to Superior Court – Juvenile.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Rud Browne, Chair of Council

APPROVED AS TO FORM:

() Approved () Denied



Civil Deputy Prosecutor

Jack Louws, County Executive

Date: _____

WHATCOM COUNTY				
Summary of the 2019 Supplemental Budget Ordinance No. 3				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
General Fund				
Superior Court - Juvenile	To fund CASA program expansion and additional FTE from grant proceeds	95,521	(95,521)	-
Total General Fund		95,521	(95,521)	-
Total Supplemental		95,521	(95,521)	-

Supplemental Budget Request

Status: Pending

Juvenile

Administration

Suppl ID # 2698

Fund 1

Cost Center

Originator: David Reynolds

Expenditure Type: One-Time

Year 1 2019

Add'l FTE

Add'l Space

Priority 1

Name of Request: CASA Program Expansion Grant

X

Department Head Signature (Required on Hard Copy Submission)

Date



2/15/19

Costs:	Object	Object Description	Amount Requested
	4333.1657	Office of Justice Progr	(\$95,521)
	6110	Regular Salaries & Wages	\$65,000
	6210	Retirement	\$8,337
	6230	Social Security	\$4,952
	6245	Medical Insurance	\$15,137
	6255	Other H&W Benefits	\$1,348
	6259	Worker's Comp-Interfund	\$520
	6269	Unemployment-Interfund	\$227
	Request Total		\$0

1a. Description of request:

The Juvenile Division of Whatcom County Superior Court has received an 18 month grant to recruit, train and support additional CASA Volunteers. We have been approved to hire an additional coordinator.

1b. Primary customers:

Abused and neglected children who are subject to a dependency action.

2. Problem to be solved:

We are currently at capacity for program volunteers given the current number of coordinators. Another coordinator will provide us the opportunity to expand this program to have additional volunteers.

3a. Options / Advantages:

This is the best option as it provides us the opportunity to expand our program without increasing costs to the county.

3b. Cost savings:

For this period of time it will save the county from having to hire another coordinator with county funds.

4a. Outcomes:

We anticipate 20 new volunteers during the 18 month period of time.

4b. Measures:

We monitor our volunteer pool on a monthly basis.

5a. Other Departments/Agencies:

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

6. Funding Source:

Office of Crime Victim's Advocacy grant



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-145

File ID:	AB2019-145	Version:	1	Status:	Agenda Ready
File Created:	02/14/2019	Entered by:	NHanson@co.whatcom.wa.us		
Department:	Council Office	File Type:	Current Year Council Appointment		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	

TITLE FOR AGENDA ITEM:

Receipt of application for the Drayton Harbor Shellfish Protection District Committee, applicant: Julie Hirsch (the Committee advises the County Council on proposed actions and operations relating to the restoration of water quality in the Drayton Harbor Shellfish Protection District) (application deadline for any other applicants is 10 a.m. March 5, 2019)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Drayton Harbor Shellfish Protection District Committee has 2 vacancies, members must have a direct interest in the shellfish protection district. Applicant: Julie Hirsch. The committee advises the County Council on proposed actions and operations relating to the restoration of water quality in the Drayton Harbor Shellfish Protection District. Application deadline for any other applicants is 10:00 a.m. March 5, 2019

HISTORY OF LEGISLATIVE FILE

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

Attachments: February 26, 2019 Intro - Hirsch application

Final Action:
Enactment Date:
Enactment #:



RECEIVED

FEB 14 2019

WHATCOM COUNTY
COUNCIL

COUNCILMEMBERS:
Timothy Ballew II
Barbara E. Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Satpal Sidhu

Drayton Harbor Shellfish Protection District Committee

APPLICATION FOR APPOINTMENT TO WHATCOM COUNTY BOARDS AND COMMISSIONS
PLEASE PRINT LEGIBLY and COMPLETE ALL ITEMS

Name: Julie Hirsch Date: 1/23/2019
Street Address: 2523 Island View Lane Lummis Island
City: Frederick Zip Code: 98262
Mailing Address (if different from street address): _____
Day Telephone: 360-510-5343 Evening Telephone: same Cell Phone: same
E-mail address: garden.salishsea@gmail.com

- Name of board or committee-please see reverse: Drayton Harbor SPDAC
- You must specify which position you are applying for. Please refer to vacancy list. DHSPDAC, citizen
- Do you meet the residency, employment, and/or affiliation requirements of the position for which you're applying? (If applicable, please refer to vacancy list.) yes () no
- Which Council district do you live in? () One () Two () Three () Four Five
- Are you a US citizen? yes () no
- Are you registered to vote in Whatcom County? yes () no
- Have you ever been a member of this Board/Commission? () yes no
If yes, dates: _____
- 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? yes () no
If yes, please explain: in the past I have contracted to W.C. (1999-2001)
- Have you declared candidacy (as defined by RCW 42.17A.055, see instructions) for a paid elected office in any jurisdiction within the county? () yes no

You may attach a résumé or detailed summary of experience, qualifications, & interest in response to the following questions.

10. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education.
1997-present: Water quality consultant, educator. Past water quality supervisor for City of Bellingham (1990-1996). Resume provided upon request. website: gardensalishsea.org

11. Please describe why you're interested in serving on this board or commission: Conduct Garden of the Salish Sea Curriculum program for Blaine Schools since 2012. Conduct water quality projects in Dtl watershed since 1999

References (please include daytime telephone number): Bobbi Hudson, Pacific Shellfish Institute Executive director 360 754-2741, Ravyn Whitewolf, Blaine PW Director 360-332-8820

Signature of applicant: Julie Hirsch

THIS IS A PUBLIC DOCUMENT: As a candidate for a public board or commission, the above information 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.

**HIRSCH CONSULTING SERVICES
LLC**
*Environmental Services
Specializing in Water Quality*

Julie Hirsch Bio

M.S. Applied Microbiology, Northern Arizona University, Flagstaff Arizona

B.A. Biology, Western Washington University, Bellingham Washington

Julie Hirsch is an environmental scientist who brings a Master's degree in Microbiology and more than 25 years experience in the water quality and water resources fields focused in northwest Washington. She is principal and founding owner of Hirsch Consulting Services that specializes in preparation of quality assurance project plans, data management, and bacteria TMDL evaluations for local and State agencies, Tribes, and non-profit organizations. Hirsch Consulting Services specializes in all phases of marine and fresh water quality monitoring. Julie is experienced in developing quality assurance project plans, data collection and assessment, report writing and report presentation. Ms. Hirsch has extensive experience designing, implementing, and managing a wide range of water quality programs during 6 years as Bellingham's Technical Supervisor for Water Quality. Programs included: drinking water, Lake Whatcom, wastewater, surface water and storm water quality monitoring and water quality education. Since 1999, Julie has concentrated her efforts on shellfish growing area recovery, from contracting to Whatcom County as co-coordinator for Portage Bay and Drayton Harbor Shellfish Protection Districts to authoring ground breaking microbial source tracking studies at Drayton Harbor in partnership with multiple agencies. She has worked with agencies in a technical workgroup setting to utilize water quality data in facilitating decision making and implementation of corrective actions that improve water quality.

In 2012 Hirsch founded Garden of the Salish Sea Curriculum (GSSC), a K-12 education program that fulfills Washington State Shellfish Initiative goals. GSSC is under fiscal sponsorship of Olympia Based Pacific Shellfish Institute. Community. Based upon a Near Term Action proposal that GSSC submitted to the Puget Sound Partnership, Community Based K-12 Shellfish Education, is a shellfish recovery strategy now included in the 2018-2022 Puget Sound Action Agenda.

Hirsch Consulting Services (HCS, LLC) was founded in 1995 providing customized environmental service to clients in the Pacific Northwest focusing on freshwater and marine water quality and water resources. H.C.S. is certified by the Washington State Office of Minority and Women's Business Enterprises.

**1328 23rd Street
Bellingham WA, 98225
Phone: (360) 510-5343**

**e-mail
hirschserv@gmail.com**

HIRSCH CONSULTING SERVICES, LLC

*Environmental Services
Specializing in Water Quality*

JULIE HIRSCH - Owner/Principal

EDUCATION

M.S. Applied Microbiology, Northern Arizona University, Flagstaff Arizona

B.A. Biology, Western Washington University, Bellingham Washington

PROFESSIONAL EXPERIENCE

1996-2018

Water Quality Consultant, founding owner of Hirsch Consulting Services, LLC a firm providing environmental consulting services to local and state governments, non-profit organizations, Indian Tribes and water purveyors.

Consulting Projects

- **Drayton Harbor/Semiahmoo Bay Water Quality Enhancement Project**, managing comprehensive Centennial Grant project with water quality monitoring, restoration and corrective action planning and public awareness and education components. Public awareness and outreach is coordinated and partnered with Garden of the Salish Sea Curriculum schools program, Blaine Washington (**Blaine Public Works Department, 2014 -2017**).
- **Garden of the Salish Sea Curriculum (GSSC)** (gardensalishsea.org) is an environmental science program, created in 2012 that uses shellfish and water quality as a vehicle to teach pollution prevention centered upon hands-on learning through field experience and an action-oriented *Salish Sea Challenge*. The program was piloted by the Puget Sound Restoration Fund for public schools in Whatcom County Washington in partnership with their Drayton Harbor Community Oyster Farm. GSSC transitioned to fiscal sponsorship from the Pacific Shellfish Institute in 2016. (2012-present).
- **Drayton Harbor TMDL support and microbial source tracking (MST) phase 3**, Drayton Harbor and Semiahmoo Bay, including preparation of QAPP, coordination of partners, sampling, reporting, presentation and technical work group facilitation for freshwater and marine water quality, microbial source tracking (MST) and circulation studies. (**Nooksack Indian Tribe, 2009-2010**).
- **Drayton Harbor MST pilot study Phase 1 & 2** used ribotyping and polymerase chain reaction methods, Drayton Harbor, Whatcom County, Washington. Preparation of monitoring plan, coordination/training of partners, sampling, reporting and presentation. (**Puget Sound Restoration Fund, Whatcom County, 2006-2009**).
- **Drayton Harbor bacteria TMDL assessment**, Whatcom County Washington including; water quality sampling and data review as part of Ecology/Whatcom County TMDL team. (**Whatcom County Public Works, Natural Resources, 2008**).
- **California Creek tributary monitoring**, Drayton Harbor watershed, Whatcom County Washington including; preparation of quality assurance project plan, performance of water quality sampling, data assessment, and reporting. (**Whatcom County Public Works, Stormwater, 2006-2007**)
- **Whatcom County MRC Volunteer Monitoring Program** in Drayton Harbor, Birch Bay, and Chuckanut drainages of Whatcom County Washington. Included QAPP development, volunteer training, data assessment, and reporting. (**Whatcom County Public Works, Stormwater, 2006-2007**)

1

2523 Island View Lane
Lummi Island Washington 98262
Phone: (360) 510-5343

hirschserv@gmail.com

HIRSCH CONSULTING SERVICES, LLC

Environmental Services Specializing in Water Quality

- **Optical brightener MST study**, California Creek. Assisted in planning, conducted sampling. (Herrera Environmental Consultants, Seattle, WA under contract to Whatcom County Public Works, Stormwater, 2006-2007.)
- **Feasibility study for microbial source tracking projects** in the Drayton Harbor watershed, Whatcom County WA, 2005 (Puget Sound Restoration Fund, 2005).
- **Groundwater monitoring and reporting** for a State Model Toxics Control Act designated site, 1997- 2007 (Port of Bellingham, WA).
- **Water quality monitoring in Blaine Harbor, Drayton Harbor, and Semiahmoo Bay** including; performance of water quality sampling, data assessment, reporting, and report presentation (Port of Bellingham 2001-2009).
- **Public drinking water system monitoring** in Whatcom and San Juan Counties, 1997-2007.
- **Stormwater treatment pilot project monitoring and evaluation, Blaine Harbor** including; preparation of quality assurance project plan, performance of water quality sampling, data assessment, and reporting. (Port of Bellingham, 2004).
- **Stormwater monitoring, Blaine Harbor** including; preparation of quality assurance project plan, water quality sampling, data assessment, reporting and presentation. (Whatcom County Water Resources Division, 2003-2004).
- **Water quality monitoring in the Drayton Harbor watershed** for a Clean Water Act Centennial grant including; preparation of quality assurance project plan and performance of water quality sampling, stormwater sampling, and reporting Whatcom County, 2002-2004. (ReSources for Sustainable Communities and Port of Bellingham).
- **Preparation of citizen's water quality training manual and quality assurance project plan**, and presentation of training session in Whatcom County Washington, 2002 (**ReResources for Sustainable Communities**).
- **Whatcom County Shellfish Protection Implementation** – data management, and design of district water quality database, coordinating stakeholder agencies in water quality monitoring programs, 1999-2001. (**Whatcom County Health and Human Services, Water Resources Division, and Whatcom Conservation District**)
- **Preparation of stormwater pollution prevention plans for industrial activities**, 1998- 2000 (Port of Bellingham WA).
- **Industrial stormwater inspections under Washington State's Stormwater General Baseline Permit**, 1997-ongoing. (Port of Bellingham WA).
- **Lake Whatcom and Whatcom Creek water quality and sediment sampling** including; preparation of quality assurance project plans, stormwater sampling and reporting.[Washington State Department of Ecology (DOE) 1997-1998, Bellingham, WA].
- **Surface water sampling, fresh and marine waters**, 1998 (Lummi Indian Business Council, Bellingham, WA)
- **Water resource inventory and assessment** including wetlands identification, fish habitat inventory, water quality monitoring, and review of existing records for rural property, and housing developments with evaluation of drinking water and wastewater systems, 1997 (Nooksack Indian Tribe, Deming WA)..
- **Development of moderate risk waste facility concept design** at Squalicum Harbor Marina, 1997 (Port of Bellingham, Bellingham)
- **Design and presentation of water quality workshops** for schools and community steward groups, 1990-1996 (Bellingham, WA).

1990-1996

Technical Supervisor of Water Quality, City of Bellingham Washington, Public Works Department. More than five years experience managing water quality programs, laboratories and staff for municipal drinking water and waste water utilities serving a population of 65,000. Implementation of Safe Drinking Water Act and Clean Drinking Water

HIRSCH CONSULTING SERVICES, LLC

Environmental Services Specializing in Water Quality

Act programs. Programs also included monitoring of lakes and streams for water quality and nonpoint source contamination and conducting public education programs.

Wetlands Inventory Coordinator, City of Bellingham Washington, Planning Department. Project manager for municipal wetlands inventory. Hired, coordinated and supervised team of 15. Performed desktop and field wetlands identifications.

Watershed Workshop Educator for community watershed stewardship groups and schools in Whatcom County Washington. Developed and presented water quality and bioassessment workshops for audiences of all ages.

US-Asia Environmental Fellow for US-AID program in Kathmandu Nepal. Designed and executed bench scale waste water treatment experiments for Nepal Environmental and Scientific Services Ltd. Trained staff in preparation for a pilot plant study.

Microbiology QA/QC Consultant for Department of Health (DOH) laboratory certification for the microbiological analysis of drinking water in Washington State. Services performed for the City of Everett Washington.

1987-1990

Field and Laboratory Water Quality Technician for consultant Dr. H.K. Speidel, Northern Arizona University, Flagstaff, Arizona. Performed sampling, and water quality testing in rural and urban settings. Instructed biology courses.

1980-1985

Forestry Technician (seasonal) for the U.S Forest Service. Performed water quality sampling as part of western U.S. wilderness lakes survey, performed wildlife surveys, trail maintenance and crew supervision.

PROFESSIONAL MEMBERSHIPS

Certified Women's Business Enterprise, State of Washington certified Women's Business Enterprise.

Water Treatment Plant Operator certified Group II, Washington State Department of Health, certificate #6347, expired.

Waste Water Treatment Plant Operator certified Group I, Washington State Department of Ecology, certificate,#5965, expired.

PUBLICATIONS, REPORTS AND PRESENTATIONS

Hirsch Consulting Services , Llyn Doremus and Geoff Menzies, 2010. *Addendum to Drayton Harbor Watershed Fecal Coliform TMDL and Phase 3 Microbial Source Tracking; Semiahmoo Bay*. July 2010. Prepared for the Nooksack Indian Tribe, Deming Washington.

Hirsch Consulting Services, 2009. *Drayton Harbor Watershed Microbial Source Tracking Pilot Study Phase 2: California Creek, Dakota Creek and Cain Creek Sub-watersheds*. September, 2009. Prepared for the Whatcom County Public Works Department - Stormwater, Bellingham Washington.

Hirsch Consulting Services, 2009. *Drayton Harbor Watershed Microbial Source Tracking Pilot Study Phase 2: California Creek, Dakota Creek and Cain Creek Sub-watersheds*. September, 2009. Prepared for the Whatcom County Public Works Department - Stormwater, Bellingham Washington.

HIRSCH CONSULTING SERVICES, LLC

Environmental Services Specializing in Water Quality

Hirsch Consulting Services, 2008. *California Creek and Drayton Harbor Microbial Source Tracking Pilot Study*. December, 2008. Prepared for the Whatcom County Public Works Department Natural Resources Division, Bellingham Washington.

Hirsch Consulting Services, 2007. *California Creek Tributary Monitoring*. September, 2007. Prepared for Whatcom County Public Works Stormwater, Bellingham, Washington.

Hirsch Consulting Services, 2007. *California Creek Tributary Monitoring*. September, 2007. Prepared for Whatcom County Public Works Stormwater, Bellingham, Washington.

Hirsch Consulting Services, 2006. *Whatcom County Volunteer Monitoring Program for Drayton Harbor, Birch Bay, and Chuckanut Bay Watersheds*. July, 2007. Prepared for Whatcom County Public Works Stormwater, Bellingham, Washington.

Hirsch Consulting Services, 2006. *Whatcom County Volunteer Monitoring Program for Drayton Harbor, Birch Bay, and Chuckanut Bay Watersheds Quality Assurance Project Plan*. December, 2006. Prepared for Whatcom County Public Works Stormwater, Bellingham, Washington.

Hirsch Consulting Services, 2006. *California Creek and Drayton Harbor Microbial Source Tracking Pilot Study Monitoring Plan*. December 2006. Prepared for the Puget Sound Restoration Fund, Bainbridge Island, Washington.

Hirsch Consulting Services, 2006. *California Creek tributary Monitoring Quality Assurance Project Plan*. April 2006. Prepared Whatcom County Public Works Stormwater Division, Bellingham, Washington.

Hirsch Consulting Services and TEC Inc., 2006. *2005 Blaine Harbor Water Quality Monitoring Summary and Recommendations*. April 2006. Prepared for the Port of Bellingham, Bellingham, Washington.

Hirsch Consulting Services, 2005. *Technical Memorandum, RE: Microbial Source Tracking Techniques Review for Fecal Source Identification in the Drayton Harbor Watershed*. Prepared for the Puget Sound Restoration Fund, Bainbridge Island, Washington.

Hirsch Consulting Services and TEC Inc., 2005. *Drayton Harbor Water Quality Monitoring Summary for 2004 and Recommendations*. April 2005. Prepared for the Port of Bellingham, Bellingham, Washington.

Hirsch Consulting Services, 2004. *Blaine Harbor Stormwater Treatment Pilot Monitoring*. August 2004. Prepared for the Port of Bellingham, Bellingham, Washington

Hirsch Consulting Services, 2004. *Stormwater Fecal Coliform Bacteria Sampling at Blaine Harbor*. June 2004. Prepared for the Puget Sound Restoration Fund and Whatcom County Water Resources Division, Bellingham, Washington.

The Environmental Company Inc., and Hirsch Consulting Services, 2004. *Technical Memorandum, RE: 2003 Drayton Harbor Water Quality Monitoring Summary and Recommendations*. April 2004. Prepared for the Port of Bellingham, Bellingham, Washington.

Hirsch Consulting Services and Puget Sound Restoration Fund, 2004. *Non Point Pollution Solutions Water Quality Monitoring*. May 2004. Prepared for ReSources for Sustainable Communities for Department of Ecology Grant #G0200269, Bellingham Washington.

HIRSCH CONSULTING SERVICES, LLC

Environmental Services Specializing in Water Quality

The Environmental Company Inc., and Hirsch Consulting Services, 2004. *Technical Memorandum, RE: Drayton Harbor Water Quality Monitoring Summary for 2002 and Recommendations for Monitoring in 2003.* February 2003. Prepared for the Port of Bellingham, Bellingham, Washington.

The Environmental Company Inc., and Hirsch Consulting Services, 2003. *Technical Memorandum, RE: Drayton Harbor Water Quality Monitoring Summary for 2002 and Recommendations for Monitoring in 2003.* February 2003. Prepared for the Port of Bellingham, Bellingham, Washington.

Hirsch Consulting Services, 2002. *Puget Sound BayKeeper Environmental Monitoring Program Training Manual.* September 2002. Prepared for ReSources for Sustainable Communities, Bellingham, Washington.

Hirsch Consulting Services, 2002. *Puget Sound BayKeeper Environmental Monitoring Program Quality Assurance Project Plan. August 2002.* Prepared for ReSources for Sustainable Communities, Bellingham, Washington.

Hirsch Consulting Services, 2002. *Quality Assurance Project Plan for Non-Point Pollution Solutions Water Quality Sampling. July 2002.* Prepared for ReSources for Sustainable Communities, Bellingham, Washington.

Hirsch Consulting Services, 2001. *Preliminary Narrative Description and Quality Assurance Project Plan for Whatcom Watersheds Pledge; Drayton Harbor Monitoring Component, Comprehensive Drayton Harbor & Lower Nooksack River Project.* June 2001. Prepared for the Whatcom County Council of Governments.

The Environmental Company Inc., and Hirsch Consulting Services, 2001. *Technical Memorandum, RE: Drayton Harbor Water Quality Monitoring Summary for 2000 and 2001 and Recommendation for Future Monitoring.* March 2001. Prepared for the Port of Bellingham.

Hirsch Consulting Services, 2000. *Drayton Harbor Shellfish Protection District Water Quality Summary.* Prepared for Whatcom County, Health and Human Services, Bellingham Washington, October 2000.

Hirsch Consulting Services, 2000. *Portage Bay Shellfish Protection District Water Quality Summary.* Prepared for Whatcom County, Health and Human Services, Bellingham Washington, October 2000.

Hirsch Consulting Services, 2000. *Coordinated Water Quality Monitoring Framework for Drayton Harbor Shellfish Protection District.* Prepared for Whatcom County, Health and Human Services, Bellingham WA, January 2000.

Hirsch Consulting Services, 2000. *Coordinated Water Quality Monitoring Framework for Portage Bay Shellfish Protection District.* Prepared for Whatcom County, Health and Human Services, Bellingham Washington, January 2000.

Serdar, D., D,Davis, and J. Hirsch, 1999. *Lake Whatcom Cooperative Drinking Water Protection Project.* Publication # 99-337, Washington State Department of Ecology, Olympia WA. Prepared for the Department of Ecology, Bellingham Field Office, September 1999.

Hirsch, J.L. 1998. *Narrative Description and Quality Assurance Plan Lake Whatcom Watershed - Cooperative Drinking Water Protection/Sampling.* Prepared for the Washington State Department of Ecology.

Hirsch, J.L. 1997. (DRAFT) *Resource Inventory and Assessment of Nooksack Indian Tribal Properties: Tenaska, Five Cedars, and Rutsatz.* Prepared for the Nooksack Indian Tribe.

HIRSCH CONSULTING SERVICES, LLC

Environmental Services Specializing in Water Quality

Hirsch, J.L. 1996. *City of Bellingham Streams Monitoring: Data Summary and Program Review*. An assessment of urban impacts to stream water quality based on five years of data collection addressing program objectives and public involvement. Prepared for the City of Bellingham.

Hirsch, J.L. 1996. *Lakes Comparison Summary: Lake Whatcom, Lake Sammamish, Lake Washington*. An assessment of potential impacts on a municipal drinking water source. Prepared for the City of Bellingham.

Hirsch, J.L. and Ann Sandvig (1996) *Impacts of Corrosion Control Optimization on Distribution System Water Quality*. Presented for the City of Bellingham and Economic and Engineering Services Incorporated at the AWWA Pacific Northwest Section annual meeting, 1996.

Hirsch, J.L. (1995). *Corrosion Control Optimization; The Bellingham Experience*. Presented for the City of Bellingham at the AWWA Pacific Northwest Section annual meeting, 1995.

Hirsch, J.L., H.K. Speidel and G. Bell (1990). *Light Induced Factors Influencing Bacterial Survival in Oxidation Lagoons*. American Society for Microbiology Annual Meeting Proceedings, 1990.

Hirsch, J.L., M. Stevens and L. Villalobos (1989). *Pathogen Die-off in Oxidation Lagoon Water and in Unialgal Culture*. American Society for Microbiology Annual Meeting Proceedings, 1989.

Hirsch, J.L. and H.K. Speidel (1988). *The Significance of Algae in Waste Water Lagoon Systems*. Presented at the American Society for Microbiology, Arizona Branch annual meeting, 1988.

References provided upon request.



Whatcom County

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

Agenda Bill Master Report

File Number: AB2019-149

File ID:	AB2019-149	Version:	1	Status:	Agenda Ready
File Created:	02/20/2019	Entered by:	NHanson@co.whatcom.wa.us		
Department:	Council Office	File Type:	Current Year Council Appointment		
First Assigned to:	Council				
Agenda Date:	02/26/2019	Next Mtg. Date:		Hearing Date:	

TITLE FOR AGENDA ITEM:

Receipt of application for the Surface Mining Advisory Committee, Environmental Consultant position - Applicant: Shannon Logan (the Committee advises the Planning Department and the Council on implementing a surface mining regulatory program consistent with the Comprehensive Plan) (application deadline for this appointment is 10:00 a.m. March 5, 2019)

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Receipt of application for the Surface Mining Advisory Committee, Environmental Consultant position - Applicant: Shannon Logan. The Surface Mining Advisory Committee has the following vacancies: 1 Vacancy representing surface mining material user, 1 vacancy Geologist, 1 Vacancy for citizen who lives in close proximity to active mining or mineral overlay area, 1 vacancy representing the Forestry industry, 1 vacancy Environmental Consultant. The Committee advises the Whatcom County Planning and Development Services department and the Whatcom County Council on implementing a surface mining regulatory program consistent with the Comprehensive Plan.

HISTORY OF LEGISLATIVE FILE

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

Attachments: February 26 meeting application Logan

Final Action:
Enactment Date:
Enactment #:

NaDean Hanson

From: noreply@civicplus.com
Sent: Tuesday, February 19, 2019 8:44 AM
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.

Title	Ms.
First Name	Shannon Shannon
Last Name	Logan
Today's Date	2/19/2019
Street Address	1205 Birch Falls Drive
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 Secondary Telephone	3603933027
Secondary Primary Telephone	3603195943
Email Address	<u>loganshannon@hotmail.com</u>

Step 2

1. Name of Board or Committee	Surface Mining Advisory Committee
Surface Mining Advisory Committee (SMAC) Position:	Environmental consultant
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:	1/2013-1/2015
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	<u>Shannon, Logan Ramboll CV SMAC.pdf</u>

9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education

I am is a licensed Professional Geologist with more than 18 years of experience working with upstream and downstream oil and gas, mining, food processing, power, and chemical and specialty product manufacturing facilities. My environmental consulting experience includes preparation of environmental regulatory applicability analyses, data management, and detailed task documentation for industrial mineral mining clients. I have also developed regulatory applicability determinations, major and minor source permitting, and compliance assurance program development for the Clean Air Act, Clean Water Act, and Toxic Substances Control Act. I am registered as a Professional Geologist in Washington, Oregon and California. I have a MS degree in Geology from New Mexico Institute of Mining and Technology and a BS degree in Geology from Western Washington University.

10. Please describe why you're interested in serving on this board or commission

I was a member of the committee several years ago and valued participating in the long-term planning process of Whatcom County, where I have lived for the past 12 years. I want to the chance to combine both my interest as a resident of Whatcom County and my experience as a professional environmental consultant for the betterment of future planning in the county.

References (please include daytime telephone number):

Crystal Greear, CFO Bellingham Marine - 253.334.9742 David Simeur, Air Interdiction Agent, DHS CBP, Office of Air and Marine, Bellingham Branch - 915.203.5349

Signature of applicant:

Shannon Logan

Place Signed / Submitted

1321 Dupont Street, Bellingham WA 98225

(Section Break)

Email not displaying correctly? [View it in your browser.](#)

SHANNON L. LOGAN

Senior Managing Consultant

Shannon Logan is a licensed Professional Geologist with more than 18 years of experience working with upstream and downstream oil and gas, mining, food processing, power, and chemical and specialty product manufacturing facilities. Her environmental consulting experience includes regulatory applicability determinations, major and minor source permitting, and compliance assurance program development for the Clean Air Act, Clean Water Act, and Toxic Substances Control Act.

Shannon has prepared permit applications for new and modified industrial sources, created compliance programs in support of those permits, and has assisted facilities with agency inspections, communications, and negotiations. She has developed data management and quality assurance programs for emission monitoring systems to comply with local, state and federal requirements. She has managed all aspects of corporate sustainability reporting and emissions inventory and reporting for local, state and federal programs including criteria pollutants, toxics, and Greenhouse Gas.

In addition to environmental consulting, Ms. Logan has experience with the exploration and production of copper and industrial mineral mines – developing exploration programs, calculating reserves and managing production plan. She has prepared environmental regulatory applicability analyses, data management, and detailed task documentation for industrial mineral mining clients.



CONTACT INFORMATION

Shannon L. Logan, PG

slogan@ramboll.com
+1 (360) 319-5943

Ramboll
1321 Dupont Street
Bellingham, WA 98225
United States of America

CAREER

Environmental Consultant, Bellingham, Washington
Environmental Consultant, Bakersfield, California
Geologist, Exploration and Production, Los Angeles, California

EDUCATION

MS, Geology

New Mexico Institute of Mining and Technology – New Mexico

BS, Geology

Western Washington University - Washington

CERTIFICATIONS

Licensed Geologist: California, Oregon, Washington
TWIC Certified

PROJECTS

Environmental Management Systems Development and Support

Determined applicable local, state and federal environmental regulations to develop matrices for safety, health, air, water and waste compliance requirements. Developed system for recordkeeping and reporting compliance, including creating compliance driven tasks for personnel.

Title V Permitting

Prepared and submitted initial Title V permit for industrial minerals mine, including permit compliance program and prepared and submitted semiannual compliance reports. Managed team responsible for refinery Title V Air Operating Permit recordkeeping and reporting; reporting compliance with federal regulatory compliance requirements; providing guidance on regulatory program requirements; and, interpreting regulations and applicability for refinery personnel.

Greenhouse Gas Reporting

Prepared and submitted federal, state and internal corporate Greenhouse Gas (GHG) reports for refineries and LNG terminal. Determined prescribed calculation methodologies and created reporting program for compliance with the federal and Washington State GHG rule. Created reporting program for compliance with 2016 Washington State Clean Air Rule.

Emission Inventory and Toxic Release Inventory

Identified emission sources, developed emission calculations and audited emission inventory programs for refineries and LNG terminal. Completed emission inventory calculations, data compilation and agency submittals. Completed TRI thresholding determinations for reporting requirements, calculated emissions, and submitted reports in the USEPA TRI-MEWeb portal.

Federal Air Quality Programs

Prepared and submitted semiannual compliance reports satisfying NSPS J and Ja programs, Appendix B and F, MACT Db, UUU, and ZZZZ. Determined applicability, prepared compliance strategy documents and created tasks for compliance management.

Toxic Substances Control Act Compliance

Determined chemical inventory for reporting under the Toxic Substances Control Act (TSCA) for refineries and LNG terminal. Created program for calculating chemical quantities and assisted with reporting in the USEPA CDX portal.

Environmental Audits

Conducted environmental audits to meet corporate compliance audit requirements at manufacturing plants and an industrial mineral mine. Audits covered requirements under the Clean Air Act, Clean Water Act, RCRA Subtitle C, solid waste, SPCC, RMPs, and chemical storage.

MEMBERSHIPS

American Fuel & Petrochemical Manufacturers (AFPM)

Western States Petroleum Association (WSPA)

Air & Waste Management Association (AWMA)/Pacific Northwest International Section (PNWIS) Chapter

PRESENTATIONS

“Overview of the Washington Clean Air Rule” at the PNWIS Symposium on the Washington Clean Air Rule, December 14, 2016.